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Official Report of Debates (Hansard)

Thursday 1 March 2012

Journal des débats (Hansard)

Jeudi 1er mars 2012

Standing Committee on Justice Policy

Organization

Comité permanent de la justice

Organisation

Chair: Laura Albanese
Clerk: William Short

Présidente : Laura Albanese
Greffier : William Short

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 1 March 2012

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 1er mars 2012

The committee met at 0904 in committee room 1.

ELECTION OF CHAIR

The Clerk of the Committee (Mr. William Short): Good morning, honourable members. It's my duty to call upon you to elect a Chair. Are there any nominations? Mr. Berardinetti.

Mr. Lorenzo Berardinetti: I'd like to move Laura Albanese as Chair of the committee.

The Clerk of the Committee (Mr. William Short): Ms. Albanese, do you accept the nomination?

Mrs. Laura Albanese: I accept.

The Clerk of the Committee (Mr. William Short): Any further nominations?

Seeing none, I declare the nominations closed and Ms. Albanese elected Chair of the committee.

ELECTION OF VICE-CHAIR

The Chair (Mrs. Laura Albanese): Good morning, everyone. Thank you for your confidence and your trust.

We shall move now to an election of the Vice-Chair. I'd like to ask if there are any nominations.

Mr. Mike Colle: I'd like to nominate the member from Etobicoke North as the Vice-Chair of the committee.

The Chair (Mrs. Laura Albanese): That would be Mr. Shafiq Qaadri. That's fine. He is not here to accept. We'll do that in absentia.

All in favour? Carried.

APPOINTMENT OF SUBCOMMITTEE

The Chair (Mrs. Laura Albanese): Now I would ask MPP Miller to read the subcommittee motion.

Mr. Paul Miller: A motion to be moved for committee: I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee;

That the presence of all members of the subcommittee is necessary to constitute a meeting; and

That the subcommittee be composed of the following members: the Chair, Mr. Berardinetti, Mr. Klees and Ms. Armstrong; and

That substitution be permitted on the subcommittee.

The Chair (Mrs. Laura Albanese): All in favour of the motion? Carried. Thank you.

BRIEFING

The Chair (Mrs. Laura Albanese): I believe that at this point we have the clerk and legislative researcher who would like to speak to us about—just a quick committee briefing.

The Clerk of the Committee (Mr. William Short): Good morning, everyone. I'm William Short. I'm the clerk of the Standing Committee on Justice Policy.

If anyone has any procedural or administrative questions as we go on throughout the year, feel free to give my office a contact whenever you guys have a question. We'll make sure to get back to you and help you out with anything that you may have questions or concerns about, regarding anything that's before the committee.

Ms. Candace Chan: Good morning. My name is Candace Chan. I'm one of the research officers from the legislative research service, with a background in law.

This is my first assignment to this committee, but I have had the opportunity to assist the social policy committee and estimates committee in the past.

I'll be the principal researcher for this committee, although some of my other colleagues will assist the committee from time to time, depending on the subject matter.

I just wanted to highlight a few of the things that we can do for you. I think our most common task is to provide you with summaries of proceedings, and most typically this is done with regard to bills. We can provide you with a summary of the recommendations and concerns that witnesses have raised, and it's usually organized by section or topic.

We can also provide you with background materials in anticipation of hearings and answer any research questions that arise during the proceedings.

The Chair (Mrs. Laura Albanese): Thank you very much. Is there any other business? Yes, Mr. Klees?

Mr. Frank Klees: Could we get direct lines for both of you where we can best contact you?

The Clerk of the Committee (Mr. William Short): Absolutely. Do you want a card or do you want a phone number? It's 416-325-3883. That's the direct line to our office.

Ms. Candace Chan: My direct number is 416-325-3692.

Mr. Frank Klees: Thank you.

The Chair (Mrs. Laura Albanese): If there is no further business, I would adjourn. Any other business?

Mr. Frank Klees: Just a question: Is there anything on the horizon in terms of bills that are coming our way?

The Chair (Mrs. Laura Albanese): We have two bills that have been already referred to our committee. One is Bill 4, An Act to amend the Retail Sales Tax Act to provide for a rebate of the Ontario portion of the Harmonized Sales Tax in respect of certain home heating costs.

The second bill is Bill 6, An Act to amend the Imitation Firearms Regulation Act, 2000 with respect to the sale of imitation firearms.

Mr. Frank Klees: Okay. And do we have any dates set for those yet?

The Chair (Mrs. Laura Albanese): That would be subcommittee.

Any other questions?

Thank you. I'll declare this meeting adjourned.

The committee adjourned at 0909.

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Thursday 5 April 2012

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Jeudi 5 avril 2012

Standing Committee on Justice Policy

Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2012

Comité permanent de la justice

Loi de 2012 sur la sécurité des tribunaux, des centrales électriques et des installations nucléaires

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STANDING COMMITTEE ON JUSTICE POLICY

Thursday 5 April 2012

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 5 avril 2012

The committee met at 0901 in committee room 1.

SECURITY FOR COURTS, ELECTRICITY GENERATING FACILITIES AND NUCLEAR FACILITIES ACT, 2012

LOI DE 2012 SUR LA SÉCURITÉ DES TRIBUNAUX, DES CENTRALES ÉLECTRIQUES ET DES INSTALLATIONS NUCLÉAIRES

Consideration of the following bill:

Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012 / Projet de loi 34, Loi abrogeant la Loi sur la protection des ouvrages publics, modifiant la Loi sur les services policiers en ce qui concerne la sécurité des tribunaux et édictant la Loi de 2012 sur la sécurité des centrales électriques et des installations nucléaires.

The Chair (Mrs. Laura Albanese): Good morning, everyone. I call the meeting of the Standing Committee on Justice Policy to order on this Thursday, April 5, to consider Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012.

SUBCOMMITTEE REPORT

The Chair (Mrs. Laura Albanese): We shall begin with the first item on the agenda. That's the report of the subcommittee. I would ask Mr. Berardinetti to read that into the record, please.

Mr. Lorenzo Berardinetti: Thank you, Madam Chair. Your subcommittee met on Monday, March 26, 2012, to consider the method of proceeding on Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, and recommends the following:

(1) That the committee hold public hearings in Toronto on Thursday, April 5, 2012, and Thursday, April 19, 2012.

(2) That the committee clerk, in consultation with the Chair, post information regarding public hearings on Canada NewsWire, the Ontario parliamentary channel and the committee's website.

(3) That each party provide the committee clerk with a list of five organizations/witnesses to invite to the public hearings by 12 noon on Thursday, March 29, 2012.

(4) That interested people who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Tuesday, April 10, 2012.

(5) That, if all requests to appear can be scheduled in any location, the committee clerk can proceed to schedule all witnesses and no prioritized list will be required.

(6) That all witnesses be offered 10 minutes for their presentation and 10 minutes for questions from committee members.

(7) That the deadline for written submissions be 5 p.m. on Thursday, April 19, 2012.

(8) That the research officer provide a summary of the presentations by 5 p.m. on Monday, April 23, 2012.

(9) That amendments to the bill be filed with the clerk of the committee by 5 p.m. on Tuesday, April 24, 2012.

(10) That the committee meets on Thursday, April 26, 2012, for clause-by-clause consideration of the bill.

(11) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair (Mrs. Laura Albanese): All those in favour? Carried.

ONTARIO ASSOCIATION OF POLICE SERVICES BOARDS

The Chair (Mrs. Laura Albanese): We'll now call our first deputant, our only deputant, for today, Mr. Fred Kaustinen, from the Ontario Association of Police Services Boards. Good morning. I would ask for you to state your name and your title for the purposes of Hansard before you begin. You will have 10 minutes for your presentation, and that will be followed by 10 minutes of questioning by the committee members.

Mr. Fred Kaustinen: Thank you, ma'am. My name is Fred Kaustinen. I'm the executive director of the Ontario Association of Police Services Boards.

Merci beaucoup pour cette opportunité de vous donner la parole et de discuter du projet de loi 34.

Thank you very much for the opportunity to speak on behalf of our president, Alok Mukherjee, and the Ontario Association of Police Services Boards, regarding Bill 34. The matter is particularly important in light of the G20 experience in 2010. We were consulted during the drafting of this bill, and for that we are grateful.

In a modern society, it is paramount that the collective needs for security are balanced with the individual rights and freedoms that we seek to uphold. We think Bill 34 is very important because it seeks to find that balance between collective security and individual rights and freedoms.

We also think that in the interests of pre-empting any problems enacting this bill on the ground, there are a couple of ways that we could either improve the bill or support it through regulation.

Those two areas are, first of all, defining more clearly what is meant by "premises" for courts, electrical generation plants and nuclear facilities; and second of all, defining more clearly what is meant by "threat" or "risk" that triggers actions on the part of the security personnel.

With regard to schedule 1, regarding the courts, there are a number of things that can be initiated by security personnel: demanding production of identification; asking questions to ascertain what poses a security risk on the part of a person; subjecting people to searches; and then denying them access or removing them from the property—or from the premises.

So the question is, first of all, what are the premises? Not all the courthouses are stand-alone facilities in Ontario. They come in all kinds of shapes, designs and locations. So, with regard to that, are we talking about the courthouse, the court property, the courtroom? What are the premises? Because it is those premises where the special powers are granted.

We're suggesting that where the court proceedings are the only activity, or that it's only government on a property, then the property itself is the premises. When the court proceedings or government services are the only activities in a building on that property, then the building is the premises. Where the court proceedings are shared with other enterprises, as is the case in shopping malls etc., then in fact it should be the courtrooms, judicial hallways, court service counters etc., that are specifically defined as the premises, and not the whole mall, for instance.

Similarly, these things also need to be identified clearly for the public—not just what are the premises, but what are the special powers granted to security personnel on those premises. Similarly, for electrical generation and nuclear facilities, the premises need to be clearly identified and duly announced to the public.

I'm going to move on to the issue with defining "threat" or "security risk." This is essentially what triggers, specifically, removal from the property. Again, it's important to define this, because otherwise we could be facilitating unintentional suspension of individual rights and freedoms.

Currently the legislation, as drafted, says that if someone refuses to identify themselves or submit to a search, they could be removed. It also says that if it's deemed by the security person that they pose a threat or a risk, they could be removed.

So what is the threat or the risk? We would suggest that it's about behaviours as opposed to the way somebody looks, necessarily, right? Those behaviours are concealing oneself from facial verification of identity, with appropriate allowances for those wearing a hijab. Other behaviours are carrying a weapon, such as a firearm, knife, blunt-force object, incendiary device or explosive device, with appropriate allowances for those carrying a kirpan; uttering threats against persons, operations and/or assets, or entering or attempting to enter a visibly designated restricted area. Those behaviours, we think, are applicable to either of the three types of facilities. Again, this could be addressed in the legislation or through regulation.

That concludes my remarks. Thank you for this opportunity. I would like to say that our intention is to help you put in better legislation that appropriately protects people while preserving individual rights and freedoms and avoiding any misinterpretation of this legislation.

Thank you.

0910

The Chair (Mrs. Laura Albanese): Thank you very much for your presentation. You are actually under the allotted time, so each caucus will get roughly about five minutes to ask questions. We shall begin with the Conservative Party and Mr. Yakabuski.

Mr. John Yakabuski: Thank you very much, Chair, and thank you, Fred, for joining us this morning.

It seems that, as you said, you folks were consulted on the bill, but maybe you weren't involved in the final drafting, in that there seem to be some holes in the definitions with respect to premises in the schedule, as you indicated, and also the concerns about threats and that they should be behaviourally based, not appearance-based. Some people, unfortunately, do make judgments based on appearance, and I agree that that's not the way we should be doing it.

We have indicated that we're supporting the bill but also looking for ways to improve it. Would these amendments, in your opinion, Fred, satisfy those needs? Because there are some concerns, and I think they've been very well articulated by members of the third party, particularly with the courthouse scenario and how people, simply by maybe looking like they don't belong, could be asked to give information that is, quite frankly, inappropriate, unless they're doing something wrong. Do you believe that the changes now would satisfy that, if those changes were made, so that people could feel free to be in the area where a courthouse was, without having an undue infringement on their rights?

Mr. Fred Kaustinen: Yes. But, you know, like any plan, as we used to say in the army, it doesn't stand first contact, so it needs to be proved on the ground as well.

Mr. John Yakabuski: Right.

Mr. Fred Kaustinen: But I think that this is an improvement on the draft legislation to—the suggestions we're making. And again, it could be in the legislation or complement it with regulation, so that the ground rules are clear to both the public and the security personnel as to what constitutes a threat, and specifically where special powers are appropriate.

Mr. John Yakabuski: The bill, Fred, do you believe it will take away, or cause not to see a repeat of, the absolute taking away of people's rights and freedoms that happened during the G20 and the way that this government abused the legislation as it was written at the time? Because we just can't see a repeat of that kind of thing. Do you believe that this bill will substantively prevent that?

Mr. Fred Kaustinen: I can speak to the first part of your question. With regard to the second part, about laying blame, that's before the courts, I think, eventually.

Okay, let's be frank: Rights and liberties were suspended. The question before the inquiries is whether or not that was appropriate or lawful. Clearly, there are a lot of different views amongst Ontarians as to whether that was the case. I think that the legislation, as drafted with these minor enhancements to support it, will go a long way to preventing a repeat of the G20. Let's face it: It's not just the written word that's going to change behaviours, right? It's also learning from that experience.

Mr. John Yakabuski: Thank you very much, Fred. We have some other questions as well.

The Chair (Mrs. Laura Albanese): Go ahead.

Mr. Jerry J. Ouellette: Thank you very much for your presentation. Just one quick question. You mentioned in your remarks that you were consulted during the drafting of this bill. I wonder if there was any consultation before the extra powers were given prior to the G20 taking place, and if so, what consultations took place at that time?

Mr. Fred Kaustinen: Not that I'm aware of; not involving our association or any of its members, including the Toronto Police Services Board. I don't think that was the case. But you would have to ask the Toronto Police Services Board.

The Chair (Mrs. Laura Albanese): We have just about 45 seconds, MPP MacLaren.

Mr. Jack MacLaren: Could you explain: Why do we need to give increased powers to security guards for courthouses and power stations? Could a security guard not keep people out who shouldn't be there? Do they need this at all, I guess is my question.

Mr. Fred Kaustinen: A courthouse is a public facility, and the public has a right to attend proceedings. It is an institution. The people in the institution, the proceedings of that facility, have a higher threat level than other public facilities. In fact, in a courthouse, the highest-risk areas are actually family court, which has typically an even more vulnerable segment of our society involved. So for that reason, there is a higher threshold of security needs.

The Chair (Mrs. Laura Albanese): Thank you.

Mr. Fred Kaustinen: Okay.

The Chair (Mrs. Laura Albanese): Sorry; the time has expired. I would now move on to the NDP.

Mr. Paul Miller: Thank you, Madam Chair. Good morning. Obviously, one of my concerns was the use of security personnel and possible lack of training and possible abusing of their powers. In a lot of the facilities that may have hired private firms for security, sometimes you get the cowboys, who aren't real trained police officers, professionals, who may escalate the situation to a point where the regular police have to be called in. It's like a double effort because you've already got the security police that screwed up and then you've got to call the regular police in because people's rights have been violated. How do you feel about where they draw the line on the security people?

Mr. Fred Kaustinen: Good question. We're glad to see that the legislation doesn't insist that it's police officers. Police officers are very expensive, and guarding that tree is not what we're training and paying them to do—making arrests, yes. But peace officers and special constables, which is what the legislation refers to, are trained in that regard, and they go through annual requalification training and testing with regard to the use of force.

We do think generally that there are a lot of improvements that can be made in police training and testing with regard to making assessments, which is why we've specifically said, "These are the behaviours to look for."

With any legislation or regulation, there should be something about training, so that is a very good point. Again, that could be specifically addressed in regulation regarding this to ensure that whatever security personnel are at these three locations—whether they come from the private sector or are special constables from a police service, that they undergo the training and the annual recertification.

Mr. Paul Miller: Plus one final thing: Over the years, there was some underlying lack of respect from regular police for these part-time police officers or security people. Will there be any training to change the mindset of the regular police to be able to deal better with the hired security or private security firms? Because they used to call—you know, "rent a security officer" or something. Is that mentality gone?

Mr. Fred Kaustinen: I think that the idea that there is a barrier of prejudice between those groups is unproven. However, police do undergo sensitivity training. In terms of changing cultural mindsets, that's not really a training solution; that's a leadership solution. So as the governors of Ontario, our members are continuing to push for progressive change, which would include that; inclusiveness, not just of alternative security personnel, but of the public in general.

Mr. Paul Miller: Thank you.

0920

Mr. Jagmeet Singh: So the bill requires or allows that security officers require that a person entering the facility provide information—first, to produce identification, and

secondly, to provide information for the purpose of assessing whether the person poses a security risk.

Currently, when you enter into a court, some facilities have a search mechanism where your body is searched, you go through an electric detection device and you may have your baggage scanned. That seems to be working so far. There have been no incidents of violence or weapons used in the courthouse in recent years—in the past 10 years. Why do you think it's necessary, one, to produce identification when people are coming in and out of a courthouse—it's a public institution—and two, why do you think it's necessary to provide information for the purpose of assessing a risk? Your comments on that?

Mr. Fred Kaustinen: That's a great question. Actually, all the questions have been great. Thank you very much. That's how we get to a better solution.

I'm trying to break down your question here. With regard to asking questions, you can see a behaviour, but that doesn't mean you understand the motive behind it. I think that's the purpose of asking questions. We could also, I suppose, say that the questions need to be related to behaviours and intents.

With regard to the searches, it is possible also that you could limit the type of search, perhaps to metal detection, but I think that before you do that you'll need to consult a more expert group.

Mr. Jagmeet Singh: My submission is that right now, the way the system works, there hasn't been any violence in courtrooms, there hasn't been any incident. Why the necessity—

Mr. Paul Miller: Time's up.

Mr. Jagmeet Singh: Oh, is it up?

The Chair (Mrs. Laura Albanese): Thirty seconds.

Mr. Jagmeet Singh: Thirty seconds—why the necessity to produce identification? Why would someone have to produce ID to enter a courthouse when currently they've been entering and exiting without having to do that?

Mr. Fred Kaustinen: I'm not sure, but I'm going to suggest that the reason is to be able, at some time, to run a search against a list of people that have made threats or, past behaviour being an indication of future behaviour, those that have been involved in security incidents at that type of facility or against people that are in that facility in the past. That would seem logical.

The Chair (Mrs. Laura Albanese): Thank you very much. We'll now move over to Ms. Wong.

Ms. Soo Wong: Thank you, Madam Chair. A couple of quick questions. I just want to hear from you, sir: Do you support the proposed Bill 34?

Mr. Fred Kaustinen: Yes.

Ms. Soo Wong: Thank you. Do you believe that the spirit of the proposed Bill 34 reflects the concerns identified by the McMurtry report and addresses those concerns?

Mr. Fred Kaustinen: For the most part.

Ms. Soo Wong: For the most part, okay; so can you elaborate on that? I know that in your presentation and your written submission to us you identified two areas: the risk definition and the premises. So if we did include those two suggestions, will that address the concerns identified by the McMurtry report?

Mr. Fred Kaustinen: I believe so, but I'll caveat that with two things that I learned this morning. One is perhaps that the type of search and the type of questions should also be, perhaps, clarified. And the second thing about lessons learned from G20, when those reports are finally released, I think that that should be tied into the preparation of the regulations supporting this legislation, just to be sure.

Ms. Soo Wong: So I just wanted to recap: What I'm hearing you say, just to validate that, is that you want to see that when the changes come, there will be parallel regulation changes to address those concerns.

Mr. Fred Kaustinen: I'm not the expert on legislation or regulation or law-making, but what we're interested in is the content. Wherever you people, you leaders, decide is the best place for it, we're fine. We just want to see that these ideas are reflected in the paradigm which is directing the conduct of security personnel, especially because that conduct is a temporary suspension of rights and freedoms. So it needs to have the parameters appropriately defined. Does that answer your question?

Ms. Soo Wong: Yes. Last question, Madam Chair: On page 2 of your submission—I'm going to quote what you said here and I want some clarification. In one of the bullets, you said here: "Further to defining what is meant as premises where court proceedings are conducted, the general public should be duly notified...." My question here is, how do you notify the public? You made a statement saying "duly notified as to what defines the premises...." How would your organization recommend the government, on this legislation, notify the public?

Mr. Fred Kaustinen: I think that a posted notice at the entrances to the premises, as defined, can suffice, in my opinion.

Ms. Soo Wong: Okay. Thank you.

The Chair (Mrs. Laura Albanese): Thank you very much for coming this morning and appearing before the committee. Thank you for your time.

Mr. Fred Kaustinen: Thank you, ma'am. Thank you, ladies and gentlemen.

The Chair (Mrs. Laura Albanese): So, just a few things that I wanted to bring to your attention: Number one, the clerk has placed a letter on your desks, the one that we received from the Ontario Power Generation. That is in regard to a site visit to Darlington and OPG by the committee members. Would you like to discuss this today? Are you ready to discuss this, or should we send this to the subcommittee?

Mr. Jagmeet Singh: Sorry, Madam Chair, I missed your question.

The Chair (Mrs. Laura Albanese): We received a letter from the Ontario Power Generation, inviting us to do a site visit to Darlington and the OPG. My first question was, do we want to deal with this at subcommittee or do members wish to discuss it today?

Mr. Paul Miller: Madam Chair, I don't think you have to go to subcommittee for that. It's just a site visit, right?

The Chair (Mrs. Laura Albanese): Yes.

Mr. Paul Miller: We'll deal with it today.

The Chair (Mrs. Laura Albanese): So, I'd like to hear some comments on whether everyone is in agreement to do it or not to do it. MPP MacLaren?

Mr. Jack MacLaren: I would say yes.

The Chair (Mrs. Laura Albanese): You would say yes. Okay.

Mr. John Yakabuski: Go ahead with the site visit. However, not all members may—

The Chair (Mrs. Laura Albanese): Choose to go.

Mr. John Yakabuski: —choose to go. I've been to all those facilities. I'm not on the committee, but as the critic—I may be subbed in, but I'm not likely to be joining because I've been to all those facilities.

I think what's important is what they're saying about the bill and not necessarily this site visit—because I think every MPP, should they choose, will have the invitation to visit any of OPG's facilities should they ask.

The Chair (Mrs. Laura Albanese): Yes, but because they're offering the visit, so that's why—

Mr. John Yakabuski: Yeah, but as the committee, it means going as joined, and it's not always possible for people to all go at the same time.

The Chair (Mrs. Laura Albanese): Absolutely. Now, I don't think it would be possible for us to go while the House is sitting. Are there any rules in that regard?

The Clerk of the Committee (Mr. William Short): Basically, if the committee wanted to go on a Thursday, the committee has permission, within its mandate, to go on a Thursday between 9 and 10:25, or 2 to 6. If the committee wanted to go on a day that the House wasn't sitting, we'd have to request permission from the House leaders to get permission to travel.

Mr. John Yakabuski: Right. Well, I don't think you can do this visit. Having done the visit, you can't do them in the allotted time. You may be able to do the 2 to 6 at one facility, but at the same time, you're not going to be able to get to more than one. They're not next door to each other for starters. So if you're going to do them, it's going to have to be, from a practical point of view, when the House isn't sitting, which would require the consent of the House.

The Clerk of the Committee (Mr. William Short): Yes, so if there is agreement from the committee, we could move a motion right now to request that the House leaders give permission to do this site visit, and go from there.

The Chair (Mrs. Laura Albanese): MPP Miller?

Mr. Paul Miller: I would move a motion that the Chair and the clerk make sure that the availability is there and that some committee members can attend, not when the House is sitting, because you know the crucial situation with the minority government—so I think a time that's acceptable and, of course, run it by the House leaders if they're okay with doing that. So the motion would be to investigate time availability and members' availability to attend off-hours on these sites.

Mr. John Yakabuski: Do we need a motion for that?

The Clerk of the Committee (Mr. William Short): That would be the motion, then?

Mr. John Yakabuski: I don't know what the government's timetable for this bill is, but it's not the most contentious bill on the order paper. If it means that these visits need to take place before the bill comes back, that may have some effect on the government's view on it, because we're then looking at probably the constituency week of May, which leaves two weeks of legislative time after that.

0930

There is obviously some desire on the part of people to have this bill done, because it is in response to the mess that the government made of the G20. I just had to get that in the record.

I don't know what the government's timetable is. It hasn't been discussed at House leaders that I'm aware, so that may have some bearing as to whether or not it can wait until the constituency week of May.

The Chair (Mrs. Laura Albanese): Mr. Ouellette?

Mr. Jerry J. Ouellette: I would ask the clerk to find out the amount of time required to do a tour—if it's a half-hour tour, if it's a 15-minute tour, whichever it may be—and then, time allowing, why not have one of the committee sessions at the Darlington facility, which they should be able to accommodate very well? I've been in there. I've seen the tours, and I've seen the facilities. We may be able to actually see presenters at that particular time and incorporate the two, if the committee so desires.

The Chair (Mrs. Laura Albanese): Mr. Singh?

Mr. Jagmeet Singh: I'm just thinking it through—and I understand my colleague's concerns about how this might delay it. I'm just thinking of my own experience, and one of the reasons why I'm able to speak on the courtroom issue and I understand that issue well is because I've been in the courthouses regularly, so I understand how they work and how some of the legislation would impede someone's rights to enter into a courthouse. It might assist, then, in that same vein.

I haven't really been to any electricity-producing facility to understand how the public might want access to it or how the public might ever come into contact with it. It might colour my perspective in a way that would be more meaningful in addressing some of the legislation. I haven't had the experience of attending, like Mr. Yakabuski has. I think it's a great idea to perhaps attend at some point. If it's not the Darlington facility, perhaps a facility that's closer to the GTA—that might be easier to do.

The Chair (Mrs. Laura Albanese): Ms. Wong?

Ms. Soo Wong: Madam Chair, if the will of the committee is to visit some of these sites, I don't want these site visits to delay or further impinge on the whole deliberation of this proposed legislation. The letter said, "We operate 10 nuclear plants, 65 hydroelectric

facilities....” Are we going to see one? Are we going to see them all?

I think if we’re going to use the House time to do these site visits, we need to be mindful of the fact that—does this visit improve our deliberation, support it and have better understanding? If it’s just going for a tour for the sake of touring, I’m not sure. So I want to be very clear. If this visit is going to help us better understand—like my colleague opposite just said, about understanding of the facility—by all means, go for one visit. So does it mean we find a facility closest to the House and we go visit? And if we do visit, what do we take back? I don’t want to just go visiting for the sake of visiting. I want to make sure this visit is tied to helping us deliberate on our bill. That’s a really key piece for me.

The Chair (Mrs. Laura Albanese): Mr. Miller?

Mr. Paul Miller: Certainly, if you want to get a feel for the situation, a site visit is good. However, my only concern is, you probably won’t be exposed to the security of the place due to the fact of privacy and the general public is not to know what security groups are in place. I doubt very much that we’re going to see the inner workings of the security and their rooms and their monitors and all the things that they use, because it’s obviously high-tech and confidential.

You’re actually visiting the site, so if you want to know how a nuclear plant works, you might learn a little bit about that. I would want to meet with the security people, not necessarily in their secret facility—but I certainly want to meet with them and see how they feel about regular police or security police that they have. Apparently, some of them have pretty good trained officers who are not regular police who are in there now. So I think more to talk to the security people, as opposed to the grand tour and the coffee and the doughnut—I think that would be useful.

The Chair (Mrs. Laura Albanese): So before I go back to Ms. Wong, maybe one thing we could do is instruct the clerk to call OPG and find out more information, find out if we can speak to security people, how long the tour would be and what exactly they would be offering. Would it be worth it also to ask about a closer location as well?

Interjection.

The Chair (Mrs. Laura Albanese): One second. I have Ms. Wong.

Ms. Soo Wong: Thank you, Madam Chair. Given all the questions just being asked now and that will probably continue to be asked, can this matter go back to the subcommittee for consideration so they can have—

Interjection.

Ms. Soo Wong: Okay. That’s the first suggestion. The other thing here is that I heard what Mr. Miller said about asking the staff of nuclear facilities so we have a better understanding of the whole issue. Could they not come to a committee meeting—the next one—because there’s no sense in all of us travelling there. We have to be mindful of costs, okay? So if the intent—

The Chair (Mrs. Laura Albanese): They are presenting at the committee. OPG is presenting.

Ms. Soo Wong: Okay, that’s good. But I’m just saying that if the intent is to get a better understanding, there are all these visual, audio, text set-ups these days that we could have set up so they can communicate with us in this committee room. I’m really concerned about delaying for the sake of visiting. There are ways to communicate, to ask the questions to staff about how they manage and how there are concerns dealing with security. There are ways for them to communicate with us, Madam Chair.

The Chair (Mrs. Laura Albanese): I had Mr. MacLaren, then Mr. Miller.

Mr. Jack MacLaren: I was going to say, for the sake of expediency and simplicity, maybe choose one location, the closest one—perhaps Darlington—because I think it would be beneficial, as Paul mentioned, to talk to the real live security guards and see them on-site. There would be some benefit to that.

Mr. Paul Miller: I disagree with Ms. Wong’s synopsis on bringing them here, because they’re not going to tell you publicly, on a committee, what their security system is, as opposed to a one-on-one on-site. It may be a little different, but they’re not going to come here and announce to the world what they’ve got there. I think that would be useless to bring them here. That’s my opinion.

The Chair (Mrs. Laura Albanese): If there are no other comments, I would return to the original suggestion, which would be let’s find out more information from OPG and then perhaps the matter can be referred to subcommittee. Is everybody in agreement with that?

Interjection.

The Chair (Mrs. Laura Albanese): Or we can have another discussion at our next meeting.

Mr. Paul Miller: Madam Chair, with all due respect, the subcommittee—all three have to agree. Somebody doesn’t show up, somebody decides to play silly—

The Chair (Mrs. Laura Albanese): That’s fine. We can discuss it in—

Mr. Paul Miller: I don’t think subcommittee is a good idea. I think you should bring it to the committee. Let them make a decision.

The Chair (Mrs. Laura Albanese): Okay, that’s fine.

Mr. Shafiq Qaadri: Who is going to be acting silly on the subcommittee?

Mr. Paul Miller: Actually, I could really explain it to you. A lot of times when the opposition has brought bills forward that have to be discussed, that they’d like to see move ahead, the Liberal member doesn’t show up, and the subcommittee cannot move ahead unless all three agree. That’s the silliness.

The Chair (Mrs. Laura Albanese): Yes, Mr. Yakabuski?

Mr. John Yakabuski: Because I’m not a member of the committee—I’m subbed in—did I hear you say, Madam Chair, that OPG was going to be presenting before the committee?

The Chair (Mrs. Laura Albanese): Yes, the clerk has confirmed that with me.

Mr. John Yakabuski: Is there a reason why they couldn't have presented before the committee today?

The Clerk of the Committee (Mr. William Short): They weren't available today.

Mr. John Yakabuski: Could Fred not have presented on another day? I mean, could we not have had—

The Chair (Mrs. Laura Albanese): No, no, it was their choice.

The Clerk of the Committee (Mr. William Short): The subcommittee gave me two days to schedule—

The Chair (Mrs. Laura Albanese): Yeah, the subcommittee has given two days to schedule. One was today and the other one is the 19th. OPG chose the 19th instead of today, so it's their preference.

Mr. John Yakabuski: The 19th is two Thursdays from today.

The Chair (Mrs. Laura Albanese): Yes. It was purely their preference.

Mr. John Yakabuski: Do we have more deputations for the 19th at this point, or just OPG?

The Chair (Mrs. Laura Albanese): Yes, we do.

The Clerk of the Committee (Mr. William Short): More—almost a full day.

Mr. John Yakabuski: Okay.

The Chair (Mrs. Laura Albanese): Yes, Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you, Madam Chair. I think that those who want to attend can go and indicate to you that they want to go. The matter is just setting up a time. I don't think it should be mandatory for all community members to attend. If they want to, they can go. It's the same with the courts. We don't need to see the courts. I mean, some of us have been in courts quite a bit and we understand the security there. Some may want to see it. So I think it's just up to the individual members. They can indicate to you that they want to go, Madam Chair, and then arrange something for them to go. I agree with Mr. Miller: We don't need a subcommittee meeting. We can decide right now, and those who want to go can go.

The Chair (Mrs. Laura Albanese): Yes, Mr. Singh?

Mr. Jagmeet Singh: You know, Mr. Berardinetti's idea is a good suggestion, I think. I'd like to attend, just so I can have a better understanding, so that I know how people will be affected, because similarly with the courtroom, I know how people will be affected. So I can speak intelligibly on the issue, because I know the idea of showing identification doesn't make sense, because right now the system doesn't work that way. People come in and out all the time, they're searched by police officers, there's no issue. So I know that from having attended. I'll certainly attend an electricity-producing facility so that I can assess more in-depth the effect of this legislation.

I don't know if it's necessarily something that we have to do as a group. Maybe we could make that decision. In the time, we can always cover it in terms of the travel time and just see the facility and then come back. Maybe we can make a decision that those who want to attend feel free to attend between now and whenever, so that we can make our input at that point.

The Chair (Mrs. Laura Albanese): I think we have enough information to proceed, so I'll ask the clerk to contact OPG, and we'll discuss the matter at the next committee meeting. Everybody in agreement?

I also wanted to remind members that if they have amendments ready for legislative counsel, those should be submitted sooner rather than later, given the dates that we have. The clerk will be sending out an email to all the members in regard to the legislative counsel contact.

Mr. Jagmeet Singh: Just a quick question on that. I have a number of amendments that I've been working on, but I want to have an opportunity to share that with the entire committee. So if I present that to the clerk, those amendments, would the clerk then be able to make sure it's distributed to everybody so that everyone has a chance to look at the amendments beforehand? I think a lot of the amendments members will agree with, but I'd like everyone to have a chance to look at them.

The Chair (Mrs. Laura Albanese): If you would like to share them with the other members, that would be up to you and you can certainly do that. The deadline is for all three parties, but you can certainly share the amendments with the members.

Any other comments, questions? We're adjourned.

The committee adjourned at 0942.

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de l'Ontario
Première session, 40e législature

Official Report of Debates (Hansard)

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Journal des débats (Hansard)

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Standing Committee on Justice Policy

Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2012

Comité permanent de la justice

Loi de 2012 sur la sécurité des tribunaux, des centrales électriques et des installations nucléaires

Chair: Laura Albanese
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 19 April 2012

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 19 avril 2012

The committee met at 0900 in room 1.

SECURITY FOR COURTS, ELECTRICITY GENERATING FACILITIES AND NUCLEAR FACILITIES ACT, 2012

LOI DE 2012 SUR LA SÉCURITÉ DES TRIBUNAUX, DES CENTRALES ÉLECTRIQUES ET DES INSTALLATIONS NUCLÉAIRES

Consideration of the following bill:

Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012 / Projet de loi 34, Loi abrogeant la Loi sur la protection des ouvrages publics, modifiant la Loi sur les services policiers en ce qui concerne la sécurité des tribunaux et édictant la Loi de 2012 sur la sécurité des centrales électriques et des installations nucléaires.

The Chair (Mrs. Laura Albanese): Good morning, everyone. I call to order this meeting of the Standing Committee on Justice Policy today. Welcome, everybody. We will be hearing deputations in regard to Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012. We will be hearing from deputants, and I would like to remind everyone that they will be offered 10 minutes for their presentation, and that will be followed by 10 minutes for questions from committee members.

ONTARIO POWER GENERATION

The Chair (Mrs. Laura Albanese): Having said that, we will move forward with the first deputant. From Ontario Power Generation we have Pierre Tremblay, chief nuclear operating officer; Paul Nadeau, vice-president of nuclear security; and Stanley Berger, assistant general counsel. Good morning. For the purposes of Hansard, I would ask that you fully state your name into the record, and also your title.

Mr. Paul Nadeau: Certainly. Good morning, Madam Chair, members of the committee. First of all, let me point out that Mr. Tremblay is not with us this morning. My name is Paul Nadeau. I am the vice-president in charge of nuclear security for Ontario Power Generation. This morning, I am accompanied by Mr. Stan Berger, assistant general counsel for Ontario Power Generation.

The Chair (Mrs. Laura Albanese): You may begin anytime.

Mr. Paul Nadeau: Thank you. OPG is pleased to see that electricity generating facilities, and nuclear facilities in particular, continue to be recognized in Bill 34 as requiring enhanced security protection. While we support most of what is contained within the bill, we believe it could be further improved by eliminating limitations on proactive security and intelligence operations on significant portions of the electricity generating facilities.

The protection afforded to electricity generating facilities in schedule 3 appears to fall short of that which is conferred upon court facilities under schedule 2. The amendment to section 138(2) of the bill in schedule 2 would allow authorized court security officers to search without warrant persons entering or attempting to enter, or who are present on premises where court proceedings are conducted. By contrast, subsection 4(2) of schedule 3, which deals with electricity generating facilities, only permits authorized officers to search persons entering or attempting to enter, or who are present on premises, if such persons consent to a search.

We do not seek to minimize the importance of security at Ontario courthouses. We simply submit that the personnel charged with security of electricity generating facilities should be afforded the same power. Electricity generating facilities are obvious targets for persons with nefarious intent.

To provide some context, what we refer to as the "controlled area" of a nuclear generating facility comprises over 80% of the entire site property. It surrounds a site's "protected area." All persons and vehicles entering a site must enter via the controlled area. Persons who are loitering or otherwise acting in a suspicious fashion in the controlled area and who refuse to submit to a search or produce identification cannot, under the present wording of Bill 34, be held pending further investigation, unless they do not immediately leave the premises following a demand to do so. This affords an opportunity for adversarial surveillance of the generating facility without opportunity for security to ascertain identities or purpose, should the individuals simply elect to leave.

Authorized security should have the additional power to detain such persons so that those with nefarious intent

are deterred from carrying on surveillance or otherwise posing an immediate threat within the property boundaries of electricity generating facilities.

The power of arrest and prompt turnover to police where there's been a refusal to provide identification and/or submit to a search proactively reduces the risk to the security of the generating facilities without disproportionately interfering with the rights of persons.

I would like to thank the Ministry of Community Safety and Correctional Services for the consultation process they led following the government's commitment to repeal and replace the Public Works Protection Act. They did excellent work in reaching out to the electricity industry.

Finally, I would like to thank this committee for studying this legislation. We appreciate the opportunity to appear today and present our concerns and look forward to providing further input in the drafting of the regulations relating to this bill. Thank you.

The Chair (Mrs. Laura Albanese): Thank you very much for that presentation. This will leave about five minutes approximately for each party to ask questions. We shall begin with MPP Yakabuski.

Mr. John Yakabuski: Thank you very much, gentlemen, for joining us today.

Paul, in your submission you're asking for some additional powers with respect to the protection of probably most particularly nuclear sites. If someone enters the site, they do go through the controlled area, they have to be scanned. I've visited your sites and I've visited AECL in Chalk River, so I do know the protocol. I guess my concern is, what would be the justification for asking—because it sounds to me like you're asking for more control outside of that controlled area. Can you give us an instance or a circumstance under which you felt not having that has impeded your ability to protect your facility?

Mr. Paul Nadeau: Maybe I need to provide some clarity around the protected area and the controlled area. The controlled area surrounds the protected area. I think when you came to our facility and you went through the search equipment, you were entering the protected area.

Mr. John Yakabuski: Right.

Mr. Paul Nadeau: We have no issues with the powers that are in place in that sense. I'm talking about the outskirts of the property, not outside the property but past the protected area that's surrounding—inside the property line.

Mr. John Yakabuski: Okay, so still inside the fence of the facility?

Mr. Paul Nadeau: Correct, yes. We've had instances where we've had people come in and look at our property. Specifically at Pickering, a number of years ago when the Toronto 18 came to look at Pickering and were interested in ascertaining what type of security was in place, and I think what they saw convinced them to take that off their list of possible targets that they were creating. So that was one instance. Had we been able to—under this piece of legislation, if we'd stopped them and they'd refused to identify themselves and submit to a search, they would have gone on their way and we would never have known the difference, frankly.

So, from time to time, we get people coming on the site involved in different types of activity, whether it be Greenpeace interested in looking at our sites—we've had vandalism on some parts of our property by different groups, those types of things. So we're unable right now, under this legislation, to insist on having their identities provided to us and searching of their vehicles etc.

Mr. John Yakabuski: Okay. So when the bill was being drafted in the consultative process, I would expect that OPG, given the vastness of your generating facilities here in the province of Ontario, would have been part of those discussions. Did you make that known to the ministry, that this was a concern, and if so, what was their response?

Mr. Paul Nadeau: Yes, we did. Frankly, we thought when it was being drafted that this would be included. We were a bit surprised when the draft was presented to us and we saw the differences between the way the court security was receiving these powers versus the electricity generating facilities. There was a difference there and we don't quite understand why the difference.

Mr. John Yakabuski: I'm going to ask either of my colleagues—Jack, did you have a question, or Rob?

Okay. So in your submission here it looks like you've suggested some amendments, and I'm sure we can all take a look at those and see how the bill might be improved, but I appreciate your comments today in bringing this issue forward and to our attention.

Mr. Paul Nadeau: Thank you.

Mr. John Yakabuski: Thank you.

0910

The Chair (Mrs. Laura Albanese): We'll pass to the NDP.

Mr. Paul Miller: I'm going to share my questions. I have one quick question. In reference to your security firm, or whoever handles your interior security, have you ever had any concerns about what level they have to go to to restrain? What's their mandate, and when does the actual police force come into action if you cannot handle the situation? Are your people at a certain level? I mean, if the police can't get there in time, what ability do your officers have? For instance, if there were weapons, what do your police—where do you draw the line on what they can do, from a liability perspective?

Mr. Paul Nadeau: First of all, the security that's present at OPG facilities—the nuclear facilities—are OPG employees. It's our own internal group. For a number of years, we had the Durham police in place, providing an armed presence. They actually left yesterday; we had a change-of-command ceremony at Darlington. So we've taken over that responsibility.

Our people receive 12 weeks of basic training. They're told about powers of arrest, use of force, the use-of-force continuum. If we run into instances where we end up arresting people for different circumstances, we

immediately call the police. So we work very closely with the police jurisdiction.

Mr. Paul Miller: Are your officers armed?

Mr. Paul Nadeau: Some are, yes.

Mr. Paul Miller: Thank you.

Mr. Jagmeet Singh: With respect to the controlled area versus the protected area, would the parking lot of the facility fall under the controlled area?

Mr. Paul Nadeau: Correct, yes.

Mr. Jagmeet Singh: And if there was an issue with a gas plant or a power plant that the community wanted to voice their discontent about, would they do that in the parking lot? Where would they do that?

Mr. Paul Nadeau: They usually do that outside the fence, actually.

Mr. Jagmeet Singh: Outside the fence?

Mr. Paul Nadeau: Yes, outside the entrance.

Mr. Jagmeet Singh: And it's not your position that you need any extra powers outside the fence.

Mr. Paul Nadeau: Absolutely not.

Mr. Jagmeet Singh: Okay. So your only concern is within the fence.

Mr. Paul Nadeau: Yes.

Mr. Jagmeet Singh: Okay. And within the fence, if someone is asked to leave, for whatever reason, would that suffice, if they were able to leave?

Mr. Paul Nadeau: Do you mean in terms of our position on this?

Mr. Jagmeet Singh: Yes.

Mr. Paul Nadeau: No.

Mr. Jagmeet Singh: Why is that not enough if the person leaves?

Mr. Paul Nadeau: We'd want to be able to identify them, we'd want to be able to search their vehicle and then we would call the police to come and handle the situation.

Mr. Jagmeet Singh: Now, this is only if a person is not committing any sort of offence; they're just standing, and there's something suspicious about that individual. Why is it not enough for them to just ask a suspicious individual to leave?

Mr. Paul Nadeau: If you're calling somebody suspicious, you've already decided that something suspicious is taking place. If you've decided that that is the situation, you should be able to identify them.

Mr. Jagmeet Singh: Why should you be able to?

Mr. Paul Nadeau: You have to be able to gather that information so you can further investigate and see what—if people are conducting surveillance on our facility, we'd like to know who they are.

Mr. Jagmeet Singh: The issue here is that sometimes you create laws that should be very specific so they don't overlap or create other issues. As far as you know, are there any laws against or in favour of, or that support or don't support, surveillance at electricity facilities? If that's your issue, maybe you should curtail it to surveillance.

The Chair (Mrs. Laura Albanese): One minute left, more or less.

Mr. Stan Berger: I'm Stan Berger, assistant general counsel. You could target, using the Criminal Code, but the Criminal Code powers are extremely restrictive. In our submission, what we're asking for is some deterrent. This isn't simply intelligence; it's also for deterrent purposes. You don't want people to be testing your facility by standing within the boundaries and then, when you ask them a pointed question about whether or not they have a purpose in being there and what their purpose is and who they are, they can just walk away. That's not a deterrent. What we're after is a deterrent. The Criminal Code is not a proactive piece of legislation. It deals with people who are in the midst of committing a crime.

The Chair (Mrs. Laura Albanese): Thank you. We will now go to Ms. Wong.

Ms. Soo Wong: I have a comment and a couple of questions for you, Mr. Nadeau. First, thank you very much for providing the constructive feedback on this particular proposed legislation. You make a couple of comments and suggestions in your written submission to us and also what you've presented to us. I want to ask: If we, as a government, take your suggestions and make the amendment, will that reflect the spirit of Mr. McMurtry's report in terms of his recommendations?

Mr. Paul Nadeau: I believe so, yes.

Ms. Soo Wong: And pushing forward, I want to ask, with regard to your recommendation—the whole piece about controlled versus protected area for the investigation—which other jurisdictions in Canada are doing this kind of procedure?

Mr. Paul Nadeau: New Brunswick and the province of Quebec are the only ones, other than Ontario.

Ms. Soo Wong: The last question I have for you is: Am I correct in hearing that you do support the repeal of this bill and that you support this minor recommendation of change?

Mr. Paul Nadeau: Yes.

Ms. Soo Wong: Thank you.

The Chair (Mrs. Laura Albanese): Thank you very much for presenting to us this morning.

TORONTO POLICE ASSOCIATION

The Chair (Mrs. Laura Albanese): We will now call on the Toronto Police Association: Mr. Mike McCormack, president, and George Cowley, director, legal services.

Good morning. Again, I would ask you to state your name and title for the purposes of Hansard. You will have up to 10 minutes for your presentation, and that will be followed by questions.

Mr. Mike McCormack: Good morning, everybody. I'm Mike McCormack, president of the Toronto Police Association. We're quite pleased with the results of Bill 34. I'll defer to my counsel, George Cowley.

Mr. George Cowley: I'm George Cowley, counsel for Mike McCormack, president of the Toronto Police Association.

We're pleased with the bill the way it's written. We're pleased that the government listened to our submissions at the committee stage, where we made them to the Ministry of Community Safety and Correctional Services, and we believe that this bill provides an adequate framework for the police to do their job and to ensure that court facilities and people who are attending courts are provided that level of security. We support it.

The Chair (Mrs. Laura Albanese): Okay. In this round of questioning, the NDP will be starting. MPP Singh.

Mr. Jagmeet Singh: Good morning. I'm going to get right into it. Since the early 1970s, when there was a shooting at the Ontario Court of Appeal, is it your understanding that there's been no violence in any courthouse in Ontario?

Mr. George Cowley: There has been violence in court facilities.

Mr. Jagmeet Singh: Sorry, I should clarify. I meant, besides scuffles between two unarmed individuals, there have been no incidents of explosive devices, incendiary devices, firearms or knives being used in a courthouse?

Mr. George Cowley: There have been incidents where knives have been seized at court facilities, where people have been stopped as they're entering with knives.

Mr. Jagmeet Singh: Right. Just to clarify my question, they haven't been used in the facility. They've been seized, but there has been no incident that has been reported, as far as my research, of any violence in the courthouse—armed with a weapon, firearm, incendiary device or explosive device. Is that correct?

Mr. George Cowley: That's correct.

Mr. Jagmeet Singh: So, so far, the system as it's been in place, with searches at some court facilities, has been working?

Mr. George Cowley: Exactly. The searches have been working. I can tell you about an incident where I was actually present. Court facilities are probably one of the safest areas in the city because of the level of security and because of the diligence of members of the Toronto police. There was an incident in Scarborough where a gang member targeted an opposing gang member and knew that, as that gang member was leaving the court, there was no chance that he would be armed, and he shot him in the head outside the courtroom door. That shows that it's recognized that the courts are safe.

People describe courts and look at courts and compare them to airports. That's completely wrong. People who attend courts are compelled to be there. It's not a discretionary issue of, well, if you want to travel, you have to go through security. People are compelled to go to court, and we have to ensure that there is a safe environment for the people who are compelled to attend, the participants in the justice system.

Mr. Jagmeet Singh: Thank you, sir.

0920

Mr. Paul Miller: There has always been an ongoing kind of feeling between full-time police and security organizations that may be guarding facilities—private firms or, you know, a situation like that. How is that situation? Maybe you would know, Mr. McCormack. These guys are like a rent-a-cop kind of thing, and the regular police have always had that attitude, like, "We'll handle it." When you get into a nuke situation, or a situation like that where they have their own security firms, do the police work well with these groups? How do you feel the attitude has changed in the police service?

Mr. Mike McCormack: What you're talking about are two different discussion points: the one surrounding this legislation, and our concerns. What we do, as far as policing the courts here in Toronto, that's done by special constables, and they're quite competent, well-trained individuals who are fully accountable.

Again, when we're talking about search, and you're talking about people's rights, it's very important that you have somebody who is competent and well trained, and that accountability issue has to be there. We have that here in Toronto. Again, I can only talk anecdotally of our experience here in Toronto with our court officers and the way they conduct searches, and the oversight. We're quite happy with it.

Mr. Paul Miller: I guess the reason I ask that question is because the last group said—it was a nuke facility, and they said that their officers get 12 weeks of training. Do you feel that's sufficient for an officer to be able to handle any kind of situation that may crop up?

Mr. Mike McCormack: When you're saying "any situation," there are always those anomalies, and we just experienced something like that with one of our uniform officers the other day, as everybody is aware. I mean, you give them the best possible training you can.

I can't speak to what private security get. I'm more in tune with what we're doing, as the Toronto Police Service and our court security, and that's where I feel that we just have a higher level of training, by having our own people trained.

Mr. Paul Miller: That's all I wanted to know.

Mr. Mike McCormack: And we make sure, again, that the accountability issue is there as well, which is a very important thing when you're talking about searches and people's rights.

Mr. Paul Miller: Thank you.

Mr. Jagmeet Singh: Right now, the way the system works is, people are not asked to identify themselves; people are not asked to provide information, the way it works in the Toronto courthouses. Is that correct?

Mr. Mike McCormack: That's correct.

Mr. Jagmeet Singh: And in terms of police powers, if there is any reasonable or probable grounds, currently the police do have the powers to search somebody or to search their car, if they had reasonable and probable grounds. Do you agree with that?

Mr. Mike McCormack: Well, no—I mean, your powers of search are contained within legislation, the Criminal Code and whatnot and other legislation. So when we're talking about when somebody's under arrest and what are your powers of search subsequent to the arrest or detainment, that's where you get the authorities

through the Criminal Code and other statutes. So there are, in specific situations, those powers of search. For instance—

Mr. Jagmeet Singh: Sorry to interrupt you. They're also proactive as well. If a police officer has any reason to believe—any reasonable grounds—they could breach someone's section 8 rights, if they had reasonable or probable grounds to search someone's vehicle, search someone's backpack—search anything, really.

Mr. Mike McCormack: Right, subsequent to arrest or other legislative authority.

Mr. Jagmeet Singh: Or even before arrest.

Mr. Mike McCormack: For instance, under the Trespass to Property Act—whether they're arrested and searched subsequent to arrest—detainment and search are two different provisions, right?

Mr. Jagmeet Singh: Certainly. But also, before arrest, if there is reason to believe—for example, people's homes are searched if there's a reasonable and probable ground as well.

Mr. George Cowley: The issue of searching before arrest is a very complex issue. In common law, the police have the power to search, incident to arrest, which is after the arrest. A search prior to arrest has to be either legislated or it has to be part of some ability to do so. Investigative detention allows—if you engage in investigative detention, there is a rigorous regime set out by the Supreme Court of Canada. The officer has to show that they have reasonable grounds to engage in that. At that point, it's only a pat-down search which can be done. It cannot be done on a routine basis, search prior to arrest.

Mr. Jagmeet Singh: Exactly. Thank you very much.

The Chair (Mrs. Laura Albanese): Thank you very much. We'll pass to—no questions? Okay, so we'll pass back to the PCs.

Mr. John Yakabuski: Thank you very much, gentlemen, for joining us this morning. Your summation was rather short, so we don't have a lot to go on there. But on some of the things you spoke about, Mr. Cowley, you talked about an incident at a courthouse. In a situation where there is a trial going on of someone who is a known gang affiliate, I expect that some pre-planning would go on and the police services would be aware that there could be a problem and are prepared in some ways for that. But in general circumstances, if John Q. Public is going to court for whatever, you have no prior expectation that there could be a problem.

I guess my question is, without having the ability to detain someone who is—I don't know if we have anybody from the ministry or not, but my understanding of the way it is written here is that it gives you the power to detain someone; it doesn't mean that people are going to be detained. And there's the ability—I don't suspect any security people have the time to detain everybody who walks through a door, but my understanding is that if there's some kind of action or behaviour that is considered to be questionable or suspicious, that's when the act would basically empower them to take some sort of action to deal with it. Is that your interpretation?

Mr. George Cowley: I think there are two aspects to court security, and I litigated this for the Toronto police when I was previously working for the Toronto police. There are two aspects. The first is entering a courtroom facility. Everybody who enters that courtroom facility has to be subject to some form of scrutiny and search. What you're talking about then, also, is heightened security in a particular courtroom.

Mr. John Yakabuski: I'm sorry, but I'm actually talking about if the courtroom is in a courthouse. You've got the actual courtroom, but then you've got a building which is much larger, in which people move about. For example, in my county, in Renfrew, we have a courthouse, which houses all kinds of different government and Attorney General facilities, and then of course there are the rooms where the actual trials or deliberations take place. But in the general building, there is, in my understanding, an expectation that security can detain someone. That's more what I'm talking about: not necessarily the room itself, but the building that houses the courtroom.

Mr. George Cowley: At the moment it's a patchwork quilt of various powers—powers under the Public Works Protection Act, powers under the Trespass to Property Act—which are being hobbled together to ensure court security in those facilities. This is what's so good about—

Mr. John Yakabuski: So how do we refine this? I guess that's my question.

Mr. George Cowley: It's working at the moment, but it's more by good luck than good management that courtroom security is good and we haven't had any major incidents, as Mr. Singh suggested. But what Bill 34 does is give clarity. It gives specific powers to the people who are required to provide courtroom security for people in the justice system. It gives us what we believe, from the association's perspective, is clarity. It gives some guidance to the members who are doing the work and providing court security for people.

Mr. John Yakabuski: You don't want to wait until something actually happens. You want to be able to be proactive.

Mr. George Cowley: Exactly. We want to be proactive, yes.

Mr. John Yakabuski: My colleague Mr. MacLaren has some questions for you.

Mr. Jack MacLaren: Currently I would assume you have the discretion, for security in a courtroom, to choose a policeman or a security guard. Would that be correct?

Mr. Mike McCormack: Again, we're talking on two different levels. One is the general court facilities, which you have to pass through. Court officers, who are special constables, are there when you go in. There's that level. If there is heightened security, as George referred to, where we have a trial and we have intelligence that there could be violence or whatever, at that point the chief may determine to put uniformed police officers there as well as court officers who are special constables. But gener-

ally, all the security within the courthouses in Toronto is done by special constables, not uniformed police officers.
0930

Mr. Jack MacLaren: Thank you.

The Chair (Mrs. Laura Albanese): Thank you. Ms. Wong wanted a chance to say something.

Ms. Soo Wong: Thank you, Madam Chair. I don't have a question. I just want to say thank you to both of you for taking the time to come and speak to us in a clear and concise way. We look forward to continuing to work with the Toronto police.

Mr. George Cowley: Thank you.

The Chair (Mrs. Laura Albanese): Thank you for your submission.

WORLD SIKH ORGANIZATION OF CANADA

The Chair (Mrs. Laura Albanese): We'll now call the World Sikh Organization to come forward. We do have a vote coming up, and members will need to get to the House on time, but we'll see how much we can—

Mr. John Yakabuski: We're running a little ahead.

The Chair (Mrs. Laura Albanese): Yes. So we'll see if we can at least hear the presentation and start some of the questioning and then head upstairs. I would invite members to come back as soon as possible after the vote so that we can continue hearing our witnesses.

Good morning.

Mr. Balpreet Singh: Good morning.

The Chair (Mrs. Laura Albanese): I would ask you please to state your name and your title fully before you begin, for the purposes of Hansard. Then you will have up to 10 minutes for your presentation, which will be followed by another 10 minutes of questioning by all the parties.

Mr. Balpreet Singh: Thank you. My name is Balpreet Singh. I am legal counsel with the World Sikh Organization of Canada. Firstly, I'd like to thank you all for the opportunity to be here today.

I'm going to start off with a brief background about the organization. We were established in 1984, which is almost 28 years ago. We are a nationwide organization. We were set up as a human rights advocacy body that defends the rights of Canadian Sikhs but also of all individuals. We've been to the Supreme Court of Canada for the Multani case, which was of course the famous kirpan case at the Supreme Court. We've also been to the Supreme Court for a case called Anselem, which was in fact for Jewish sukkah hut owners. So we are interested in all areas of human rights.

After reviewing Bill 34, what comes to mind is that the entrance to courthouses is an important access-to-justice issue. Ensuring the security of courthouses is also of absolutely paramount importance. So what's necessary, in our opinion, is to define what a security risk is more precisely in the bill. That would mean: What sort of risks, what sort of threats in terms of personal property items and what sorts of behaviours would actually be perceived as threats? The unwarranted removal of anyone from a courthouse would, of course, be an issue with regard to access to justice and it would be a violation of rights.

We have three or four recommendations for you. The first is, like I said, a clear definition of what "security threat" means with respect to restricted items, behaviours etc. Our second recommendation is appropriate accommodation for articles of faith, such as the kirpan, which is, of course, a Sikh article of faith, as well as assistive devices, such as canes or walkers etc. The third would be similar accommodations for religious headgear, such as hijabs, niqabs, yarmulkas or the turban. It's our suggestion that these accommodations should be provided for within the regulations.

Going to my first recommendation with respect to the kirpan, it's important that dangerous items be excluded—obviously weapons, explosives, firearms must be excluded—but a specific exclusion or accommodation for things like canes and walkers, which could be seen as blunt-force weapons, needs to be created, and that's a given.

At the same time, we would recommend an exclusion for the kirpan. The kirpan is an essential Sikh article of faith. It's worn with the other articles of faith. The word "kirpan" itself is a combination of two words: "kirpa," which means grace, and "aan," which means honour. It's a reminder to a Sikh to stand up for justice; it's not worn as a weapon, to be very clear. The Supreme Court of Canada has been very clear that the kirpan is not to be taken as a weapon; it is to be taken as an article of faith.

Currently, courthouse policies in Ontario are a mixed bag with respect to the accommodation of the kirpan. Courthouses in areas such as Peel and York currently have a blanket exclusion on the kirpan. There's no policy that specifically excludes the kirpan; it's a policy that excludes weapons. So the kirpan, by the security officers there, is considered a weapon and therefore excluded. That's despite the fact that the kirpan is, in fact, expressly accommodated at the Parliament of Canada, the Supreme Court of Canada, as well as here at the Ontario Legislature. I would point out, however, that, pursuant to an agreement reached earlier this year between the World Sikh Organization of Canada, the Ontario Human Rights Commission, the Toronto police and the Attorney General, the kirpan will be accommodated at Toronto courthouses.

As you're aware, there's no one standard right now with respect to courthouse security, so it's up to the individual police forces to deal with. It's our recommendation that, as opposed to a piecemeal approach with respect to accommodation of the kirpan in different jurisdictions in Ontario, Bill 34 is a great opportunity to make it uniform and to make a statement that the kirpan will be accommodated. Simply speaking, the fact that it has been accommodated in Toronto means that the other jurisdictions where it's not accommodated would force us to essentially approach each one and go through that tedious process; whereas here you have the opportunity to get it done right away, all in one stroke.

I'll move on to religious headgear. It's important in some circumstances, obviously, to identify individuals who wish to enter the courthouse—not necessarily in all, but I can appreciate in some. While establishing identity is absolutely important, accommodation is also necessary for individuals who wear the niqab. To be clear, the niqab is a Muslim practice; Sikhs don't wear the niqab. But in the interests of freedom of religion, we find it appropriate to create an accommodation for those Muslim women who wear the niqab, which would be as simple as having a separate screening area and having women security officers do the screening for them.

Other religious head coverings such as the yarmulke, the hijab, nuns' habits and turbans all need to be dealt with with a certain level of respect and sensitivity. For Sikhs, the turban isn't like any other article of clothing. It's not a hat that can come off and go back on. The removal of a turban is considered, for Sikhs, equivalent to a strip search. The indiscriminate touching or search of a turban would be a source of great discomfort and embarrassment.

We have some suggestions with respect to how a turban can be screened. If a Sikh does set off a metal detector, wanding can take place. If the turban needs to be searched further, it can be, with the permission of the wearer, patted down. If, in an extreme situation, further examination of the turban needs to take place, we would recommend that that take place in private and, if it needs to actually be searched, that an alternative head covering be provided and, once the turban is returned, that a mirror be provided so that the Sikh can retie the turban.

I would point out that this would be an absolutely extreme circumstance. It wouldn't be common practice for a Sikh to remove his or her turban at a security search. It doesn't happen at airports—only in extreme circumstances. I wouldn't expect it to happen at all, frankly, in entering a courtroom. Just to be on the safe side, we're pointing that out.

Those are my submissions to you, and I'm open for questions.

The Chair (Mrs. Laura Albanese): Thank you. This round of questioning will begin with the Liberal side, the government side, and MPP Wong.

Ms. Soo Wong: Thank you so much for coming to present this morning, sir. I've got a couple of questions for you. First, can I ask, is your organization supportive of the repeal of the PWPA?

Mr. Balpreet Singh: That's not our concern right now. We're here mainly to talk about the accommodation of the kirpan as well as articles of faith.

Ms. Soo Wong: Okay. So the second question is, if the government does take your recommendations, will that reflect the McMurtry report, which is part of this process of repealing the PWPA? Given your recommendations—you recognize that Mr. McMurtry's report is a very historical part of this repeal—will that reflect your understanding of the bill and your organization's requirement?

Mr. Balpreet Singh: To be clear, we appreciate the importance of looking at this issue, especially after the G20 incidents. They say that an ounce of prevention is better than a pound of cure. We feel that looking at these issues is important right now during the drafting of this bill so that we don't run into instances of individuals having their rights violated subsequent to that. Our main issue right now is to identify these issues for you so that they can be incorporated into the drafting of this bill.

0940

Ms. Soo Wong: I appreciate your comments and recommendations. So what I'm hearing, just for clarity, is that you want a more clear definition of the term "security threat," and that you are asking for some kind of accommodations with respect to the kirpan and the religious headgear in the last piece dealing with any necessary accommodation, if necessary. Am I correct?

Mr. Balpreet Singh: Right. Those accommodations, I think, flow from a more precise definition of "security threat." Like I said, weapons would obviously be excluded, but an exception to weapons should be explicitly created for kirpans as well as assistive devices. Similarly, for identification of individuals, that should be necessary, but for individuals that are wearing religious headgear, like I said, accommodations should be made a part of the regulations.

Mr. Shafiq Qaadri: Pardon me for interrupting, but I don't think we want the government to fall earlier than necessary, so we might want to go and vote now.

Mr. John Yakabuski: No, we've got time.

The Chair (Mrs. Laura Albanese): Well, I was going to—we have one minute—

Mr. John Yakabuski: The Chair will rule that.

Interjections.

The Chair (Mrs. Laura Albanese): Excuse me. We have one minute and a half left for questioning. That was the opportunity that I was going to give to the government side and then suggest that we recess.

Mr. John Yakabuski: I have a couple of questions.

One, the kirpan: It's defined by the Supreme Court that it is not a weapon, and every courthouse, I would expect, in the province—and facility—could be made aware that it is to be treated as a religious item issue, not a weapons issue, which would speak to not having to define it specifically in law, because the Supreme Court has already taken care of that. Their 2006 decision made it very clear that it is not a weapon; it is an item of faith, an article of faith. I'm not sure that it would be necessary to specifically single it out.

The other thing I have a question on is your concern about the definition of behaviour. I suppose the clichéd one we always go to—and I think security personnel need to have a certain amount of flexibility—is the old saying where, "I can't tell you what pornography is, but I'll certainly know it when I see it." If you, as a security person, have to go through a checklist—"Well, as I am going through this list, does this person fall into those categories?" I think there are times, if they see somebody who is doing something that is maybe a little out of the ordinary, the wise thing to do, the prudent thing, would be to observe them to see if things go a little further, and,

if so, if it falls into a category where they, as trained personnel, say, "I'm more than a little concerned here. I think I have the right now and I think I have the responsibility to ask some questions." If everything has to be defined, don't you share with me that it becomes so narrow that it might actually impede someone from acting when the prudent thing to do would be to act?

Mr. Balpreet Singh: Answering both questions: Firstly, the kirpan decision came out in 2006. Despite that decision being fairly clear that the kirpan is not a weapon, that hasn't trickled down to courthouses in Ontario. Like I said, York and Peel—which has one of the largest Sikh populations anywhere in Canada, for example—still exclude the kirpan. The reasons given are once again the same: that it could be used as a weapon. Once again, we've reached an accommodation in Toronto which opens the doors up, but, like I said, that hasn't been the case, that it would automatically just follow from that Supreme Court decision. It is an issue right now that needs to be addressed.

With respect to your second suggestion, I would agree with you that there needs to be a certain amount of flexibility, but we have to define it to some extent because giving a free hand can create problems. There have to be some guidelines. There has to be some sort of a definition of what is a threat behaviour, what is a threat item, once again also creating some sort of flexibility for the security officer to determine if things falling outside of that might also be a problem.

The Chair (Mrs. Laura Albanese): Thank you very much. We will have to recess now for the vote.

Mr. John Yakabuski: I appreciate your time. Thank you very much.

The Chair (Mrs. Laura Albanese): Thank you.

The committee recessed from 0945 to 0958.

The Chair (Mrs. Laura Albanese): We'll call Mr. Singh back.

Mr. Shafiq Qaadri: Point of order, Madam Chair.

The Chair (Mrs. Laura Albanese): Can we finish the round of questioning first, please?

It's the NDP's turn. MPP Singh, you will have about three and a half minutes for questions. Please begin.

Mr. Jagmeet Singh: Just to clarify, as you indicated, though there's been a Supreme Court decision in 2006, that has not been able to trickle down into the courtrooms and there is still a ban, or a quasi-ban, on the kirpan as it flows into the blanket of a weapon, because other court jurisdictions aren't aware or haven't implemented the 2006 decision in the Supreme Court?

Mr. Balpreet Singh: Just to be clear, the 2006 decision was with respect to, specifically, kirpans in schools; it wasn't with respect to kirpans in courthouses. While the decision is quite favourable to the kirpan, it doesn't specifically say the kirpan must be accommodated in courthouses, and for that reason, there hasn't been that trickle-down effect. In fact, the Toronto policy comes after an incident in 2006, for example, where an individual complained that they weren't allowed, as a student, to enter. It's taken years to get to where we are, with respect to the accommodation, in just one jurisdiction. It would, I expect, be quite cumbersome to have to do it in every jurisdiction.

Mr. Jagmeet Singh: That was going to be my next question. How long did it take to get the accommodation in the Toronto courthouses?

Mr. Balpreet Singh: Yes, 2006 to 2012—so six years of back and forth before that accommodation policy was created.

Mr. Jagmeet Singh: That's the only jurisdiction that has an accommodation so far?

Mr. Balpreet Singh: There are informal accommodations offered in different jurisdictions—for example, I believe there are some courthouses in Hamilton—but there's no uniform policy. So a Sikh wearing a kirpan simply doesn't know whether they're going to be allowed in or not.

Mr. Jagmeet Singh: Just to clarify, the Supreme Court of Canada, the supreme court in the land, does allow kirpans?

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Mr. Balpreet Singh: That's right. Visitors to the Supreme Court of Canada as well as, obviously, lawyers are permitted to enter with their kirpans, wear their kirpans, and similarly with the Parliament of Canada.

Mr. Jagmeet Singh: Okay. With respect to the issue of the two other sections of Bill 34, which you haven't testified on or commented on, I'll just ask if you have any comments. If I ask pointedly, the requirement to identify and the requirement to provide information: Any response to that, any notion on that from a human rights aspect?

Mr. Balpreet Singh: As a human rights organization and personally as a lawyer, I can see issues with respect to having to provide identification for every single individual who would enter. I'm also uncomfortable with a carte blanche to question anyone who enters. There could be individuals who wish to anonymously watch proceedings. There could be any number of reasons why a person wouldn't necessarily want to answer a number of questions about why they're there. Obviously, they should be safe to enter with respect to not having a threat, with respect to a weapon or otherwise, but I don't see a need, in every instance, to identify or question every entrant to a courthouse.

Mr. Jagmeet Singh: I have no further questions. Thank you.

The Chair (Mrs. Laura Albanese): Thank you, and thank you very much for being here this morning.

Mr. Balpreet Singh: Thank you.

The Chair (Mrs. Laura Albanese): MPP Qaadri had a point of order that he wanted to bring to our attention before calling up the next presenter.

Mr. Shafiq Qaadri: As you know, a number of votes are being called and likely will be called throughout the day. I consulted with the table officers. The protocol is usually, certainly at the discretion of the Chair, either five minutes or 10 minutes before. I would simply suggest that 10 minutes be allowed. It would allow us not only

enough time to physically walk there, but possibly to get our bearings. I believe it's in the interests of some parties that some of us not show up for that vote and in the interests of other parties that we be there in full strength and full numbers.

I do not want to be compromised. I note, for example, that some of the individuals in this committee, who shall remain nameless, were in the House 21 seconds before the vote, and I don't want to have to go through that. With the urgency in a minority government, I think that this request will be taken seriously.

Mr. John Yakabuski: Can I at least comment on the point of order?

The Chair (Mrs. Laura Albanese): Yes, you may, but Mr. Miller put up his hand first.

Mr. Paul Miller: I don't have a problem allowing people to have enough time to get to their respective seats, but we don't vote until after question period, right, so any deferred votes are after.

Mr. Shafiq Qaadri: There's a vote right now.

Mr. Paul Miller: A vote on—

Mr. Shafiq Qaadri: Adjournment.

Mr. Paul Miller: Adjournment of debate.

Mr. Shafiq Qaadri: Yes.

Mr. Paul Miller: So that's what you're concerned about?

Mr. Shafiq Qaadri: Yes. As a government, we should be concerned with all votes in the Parliament of Ontario.

Mr. Paul Miller: But there are more opposition members here in the committee.

Mr. John Yakabuski: We've got a person here to appear before the committee. We can deal with this after.

I left here at about a minute and three left. I made it to vote. I was there at 21 seconds. The childish behaviour over there, it's ridiculous. Ten minutes? I left this room, there was a minute and three on the clock, and I was in there to vote, so give me a break.

The Chair (Mrs. Laura Albanese): We will resume this discussion after the next presenter, if everyone is in agreement.

ONTARIO PROVINCIAL POLICE

The Chair (Mrs. Laura Albanese): The Ontario Provincial Police are here? Please come forward. You will have up to 10 minutes for your presentation, which will be followed by 10 minutes of questioning by all parties. Please state your name for the purposes of Hansard recording.

Mr. Larry Beechey: Thank you. My name is Deputy Commissioner Larry Beechey of the Ontario Provincial Police.

The Chair (Mrs. Laura Albanese): Thank you for being with us.

Mr. Larry Beechey: Thank you. The written material I've submitted to you is exactly the same as what I'm going to read off. It's okay to proceed?

The Chair (Mrs. Laura Albanese): Yes, you may proceed.

Mr. Larry Beechey: In the past, the Ontario Provincial Police have used the Public Works Protection Act for court security functions and for some issues in regards to the security of the offices of the provincial government that it is responsible for.

In the case of court security, the Ontario Provincial Police have been consulted during the preparation for Bill 34 and is supportive of the wording proposed. We have reviewed incidents in relation to our security of the provincial government offices and are confident that existing provincial and federal legislation will be appropriate to utilize in any future incidents.

The Ontario Provincial Police did not request or utilize the designation of the Public Works Protection Act for its policing role in the G8 summit. We do feel, however, that at some future time, it will be prudent to review legislation in regard to several concerning areas that are now covered by common law. These areas all relate to having the authority and power to move the public or prevent the public from accessing certain areas or locations with regard to public safety.

Examples are as follows:

—a protest activity where the police prevent entry to a building or a specific boundary of land, due to safety concerns and prevention of a breach of the peace;

—an occurrence of an armed or barricaded person where residences within an established inner perimeter have to be evacuated; or

—a disaster such as a flood situation, where members of the public may have to be evacuated for their own safety and the safety of their rescuers.

The Honourable Roy McMurtry, in his report on the Public Works Protection Act, felt that common law would cover police action on these types of incidents. We accept his findings and recommendations and will continue on without any additional powers, but we do wish to note this as a future concern.

I'd also like to address some concerns in relation to the sections specifically related to court security in Bill 34. Nothing that I have seen in the proposed wording would constitute a change in how we are currently conducting our business. We do not want to examine lawyers' notes. Any exam or identification required would be based on the individual situation and/or perceived threat. I might add that we need to have reasonable and probable grounds to escalate that at any point, and we need to be able to justify any of our actions.

We need to ensure that persons entering the courtroom are there for a lawful purpose and do not have weapons that could injure or kill anyone in the courtroom.

We respect religious beliefs, but if there's a danger of violence, it may well be caused by a third party that accesses a ceremonial weapon for their own illegal purpose.

There's nothing in this legislation that reduces anyone's rights or freedoms from what now exist, but it does

continue to give police and court officials the ability to guarantee the safety of all persons entering the courts.

In regard to the schedule 3 sections, we've also had input and agree with the wordings. In this area, much work will have to be done in drawing up the appropriate wordings and parameters for the required regulations. There must be stringent regulations as to who has the authority of a peace officer under this act, what qualifications they must have, what training they will require and what limitations they will have on their powers, along with an appropriate oversight body to ensure accountability. The Ontario Provincial Police look forward to further consultation in this area.

As noted, the Ontario Provincial Police has been adequately consulted during the process and is in agreement with the proposed legislation. We look forward to further consultation in the development of any of the regulations. Thank you.

The Chair (Mrs. Laura Albanese): Thank you, Deputy, for your presentation. This round of questioning will begin with the Conservative Party: MPP Yakabuski.

Mr. John Yakabuski: Thank you very much, Madam Chair. Thank you very much, Deputy Commissioner—I wanted to make sure I got that right, Larry—for joining us today.

It's interesting. I'm glad you had the chance to join us, because it's not something that I'd actually thought about when I was speaking with Balpreet here earlier—our last submission—specifically, to the kirpan. While it is clearly defined as not being a weapon, it sounds like your concern is that while it's not defined as a weapon, it could be used as a weapon by a third party, should it be taken off a person who was wearing it. Is it currently the practice—because if I go to get on a plane and I have a certain toiletry tool, I'll have that removed, because even though it's not defined as a weapon, it could be used as a weapon. If you're getting on a plane, do you have to remove—are you aware of whether you have to remove the kirpan, if you're wearing it?

Mr. Larry Beechey: I'm not sure on that. I would like to say that I know there has been talk about the identification and the search for weapons and the rest of it. We do not now demand identification from everybody who enters a courtroom. We do not search everybody who enters a courtroom. We take it, if there is a perceived threat, if there is a violent incident that we know will cause problems—and like I say, it has to be justified. We would never just approach people and take kirpans or anything else off them in a courtroom unless we had a specific issue within the court and we had to deal with that.

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I don't think we would take tweezers off, like some of the airplanes do, but anything that we felt could be used as a weapon, we would try to remove. I know there was some mention of canes. I don't know if we've ever removed a cane. What we try to do is, instead of doing the whole courthouse, we will do a specific courtroom. So if we have to remove a cane from somebody, we would assist them into the court and we would give them their cane back when they come out.

Mr. John Yakabuski: Joe Kapp is in favour of removing canes.

Mr. Larry Beechey: Is he?

Mr. John Yakabuski: I don't know if you noticed the Angelo Mosca-Joe Kapp situation at last year's CFL dinner.

I know we've had some suggestions that the provisions in the act as written would have to be lessened or weakened to some point. Would it be your position that if these provisions were weakened, it would make it harder to ensure that we had adequate security in our courthouses?

Mr. Larry Beechey: I think the wording is adequate. I don't know if you need to deal in a regulation for some of those things. Once things get into law, whether it's regulations or not, there are always interpretations on them. So I would rather see courtroom guidelines—

Mr. John Yakabuski: My colleague Mr. MacLaren has a question for you. Thank you very much.

Mr. Jack MacLaren: Mr. Beechey, in your presentation at one point, you say, "There is nothing in this legislation that reduces anyone's rights or freedoms." I'm awfully pleased to see that, but I also hear you say that, currently, if it's warranted, you will search somebody or do what's required to provide security.

I'm very concerned that our rights and freedoms not be infringed upon as Canadians. We consider ourselves to be a free people with a constitutional right to those freedoms, and I am very reluctant to see more police powers created unless they're truly needed. I guess I need some convincing that this legislation is necessary, because as far as I'm concerned, I think you guys are doing a great job right now.

Mr. Larry Beechey: Yes, but we are relying on the Public Works Protection Act to do what we have to do in the courts. This is only conferring those sections over to a different piece of legislation. So I haven't seen anything different there.

Mrs. Laura Albanese: We will now move to the NDP.

Mr. Paul Miller: Thanks for coming. In a courtroom situation where the kirpan is allowed in, do you feel that there's any security problem as far as maybe a prisoner or some other person who's upset who could get their hands on such a weapon? Do you feel that that could be a possibility and that would be one of your concerns?

Mr. Larry Beechey: There's always a possibility in any situation. There could be a possibility in this room that there could be somebody in here who may act out. We don't enforce any of the advanced security measures unless we have some grounds to do it, that we know that there's maybe a very violent prisoner who we can't secure in the court. Most courtrooms are secured fairly well, and we will have an actual constable with that person if we feel they're violent. The measures I talked to, in courtrooms where we've had to increase security, have been different protest groups who are fighting, who

we know become violent; different biker enforcement trials. Those are the ones that we really look at. So it's just not the everyday.

It would be nice to have something that, if someone is wearing a kirpan, they actually declare that and just say, "I have a kirpan," so there's knowledge of the police who are in the courtroom, that they know it's there in case something happens.

Mr. Paul Miller: That's good. Thanks very much.

Mr. Jagmeet Singh: With respect to the current protocol, would you agree with me that if the police or any court security personnel were given the right to search upon entry—very cursory; just to ensure that there's no explosive devices or firearms, whether it's a wanding or a metal detection device—that that would cover that area of courtroom security? Would that be sufficient in your mind in terms of security? That's how it's been going on right now.

Mr. Larry Beechey: It's all dependent on the situation. Like I said, we have to deal with individual situations. We usually do wanding. I think I can recall in one other court that we did further searches on some individuals that we had information that they may cause problems. Other than that we haven't, and I don't think we've ever dealt with an issue with a kirpan.

Mr. Jagmeet Singh: Okay. With respect to access to other potential forms of threat, you'd agree with me that there are often police officers that are in courthouses.

Mr. Larry Beechey: Yes.

Mr. Jagmeet Singh: And police officers often attend with loaded and armed firearms?

Mr. Larry Beechey: Yes.

Mr. Jagmeet Singh: That firearm could easily—I mean, it could be, if you're talking about potentials, if they're tackled by a group of four people, they could wrest away their firearm from them. It's a possibility.

Mr. Larry Beechey: Well, I know the security of our holsters and half the time I have trouble getting it out, so I don't think three or four people not knowing—

Mr. Jagmeet Singh: How to do it.

Mr. Larry Beechey: —would ever get it out.

Mr. Jagmeet Singh: Fair enough. There's also batons that people carry that are on their person. There's also glass items that are allowed into buildings, glass bottles and glass devices—glass items.

Mr. Larry Beechey: Like I said, there's always weapons of opportunity anywhere. It depends on your court security. When you're talking about police, we are trained in the resistance of anyone getting our weapons, so that's a little different than a regular person going in that may have something.

Mr. Jagmeet Singh: I went to a lot of jiu-jitsu courses with police officers and I beg to differ, but we'll talk about that afterwards.

Sir, also in addition to—

The Chair (Mrs. Laura Albanese): One minute left.

Mr. Jagmeet Singh: In addition to these concerns, would you agree with me that, in terms of your experience, with the powers granted in terms of search, there has been no incidents that have been reported of either death or serious injury in any courthouse in Ontario as a result of any weapons or any firearms or explosive devices being brought in?

Mr. Larry Beechey: There's been violence in some of our Ontario courtrooms—

Mr. Jagmeet Singh: Specifically related to weapons.

Mr. Larry Beechey: I do not have any evidence on that. I did not bring any on that.

Mr. Jagmeet Singh: My research is that there hasn't been, but I wanted to confer with you.

Mr. Larry Beechey: I can't confirm or deny.

The Chair (Mrs. Laura Albanese): Thank you. And now the government side.

Ms. Soo Wong: Thank you very much for your presentation this morning, Deputy Commissioner. I have a couple of quick questions for you. First, did I hear correctly that you believe the wording in the proposed Bill 34 is adequate?

Mr. Larry Beechey: Yes.

Ms. Soo Wong: Okay. The second question I have is that there has been a lot of talk just now about the kirpan and accommodation. Do you believe, in your professional opinion, that accommodating the kirpan and other headgear can be considered as a risk to the courthouse?

Mr. Larry Beechey: Like I mentioned before, they have to be taken on individual cases. General entry into a courtroom I don't think should ever, unless there's a huge threat—would ever be diminished or kirpans not be allowed. But a specific courtroom, it may have to come to that. It just depends on the level of information we have on what violence may occur.

In that case, I heard the previous fellow that was up here, and yes, we would treat people with the utmost of respect and do what we could. We usually deal with that in our everyday work. If we have to search someone, we search with a female if that's the case or whatever. We're not out to infringe on anybody's rights and freedoms, but we do have to ensure that security.

Ms. Soo Wong: My last question: Do you support Bill 34 as it has been presented?

Mr. Larry Beechey: Yes.

Ms. Soo Wong: Okay, thank you.

The Chair (Mrs. Laura Albanese): Thank you very much for presenting to us this morning.

Before we recess, I just would like to address the point of order put forward by MPP Qaadri. I will be very mindful to give members enough time to go upstairs for a vote and keep it as close as possible to the 10 minutes. I would like to retain the flexibility if a presenter is almost finished. If we have only 30 seconds to go, I would like to retain that flexibility, but I will be very mindful to give members enough time to go up to the chamber to vote. Thank you. So we will be back here at 2 o'clock.

The committee recessed from 1020 to 1400.

ONTARIO BAR ASSOCIATION

The Chair (Mrs. Laura Albanese): We're resuming our session. We have the Ontario Bar Association, which

we welcome to our committee. I would ask you to please state your name and your title for our Hansard recording. You will have up to 10 minutes for your presentation, and that will be followed with up to 10 minutes of questioning by all parties. Thank you, and you may begin any time.

Mr. Paul Sweeny: All right. Thank you very much for giving us the opportunity to appear before you. My name is Paul Sweeny. I'm a Hamilton lawyer and the president of the Ontario Bar Association. Beside me is David Sterns, who is a Toronto litigator and the chair of the public affairs committee, and Cheryl Milne, a constitutional lawyer who practises here in Toronto.

The Ontario Bar Association represents more than 18,000 lawyers, law professors, law students and judges. Our members have 30 different practice areas. We are the voice of the legal profession in Ontario. You have our written submission, which has been approved by our board, which includes representatives from each of the eight judicial regions.

At the outset, I just want to say we're pleased the government has taken steps to repeal the Public Works Protection Act and tailor the legislation specifically to court security requirements, rather than leaving them ad hoc. As lawyers, we, like the government and the members of this committee, want to ensure that the courts are safe and open. If courts aren't safe, lawyers aren't safe.

There are really three areas which we're going to focus on. Mr. Sterns is going to address these in more detail.

Firstly, the effective and efficient administration of justice requires that officers of the court be entitled to enter courthouses in a streamlined and efficient manner, and in a way that ensures that any client privileges which attach to communications are protected and cannot be required to be disclosed.

Secondly, given the open court principle, the requirement for the general public to produce identification is, in our view, inappropriate.

Thirdly, there's a need for clarification of the information for the purposes of assessing whether the person poses a security risk, and confirmation that it does not include requiring a person to state the purpose for which he or she desires to enter the premises; the requirements for notice with respect to search; and to deal with the abandoned attempts to enter the building.

Mr. Sterns is going to address these issues in more detail.

Mr. David Sterns: Thank you. Good afternoon, Chair, honourable members. The OBA, the Ontario Bar Association, views court security from two perspectives. First, the courts are our workplace. They are where we serve our clients, and we want them to be safe places for all participants in the justice system. In that regard, we welcome the initiative to bring forward legislation specifically tailored to the unique environment of the courthouse.

Courts are where disputes are to be resolved without resort to violence. But hostility and the threat of violence are never far from the surface in criminal, family and even in some civil disputes. There have been instances of lawyers and their clients being harassed or targeted by adverse parties in litigation, and some of these acts have occurred within the sanctity of the courtroom. Judges, as well, live with the fear of violence erupting in the courtroom.

For these reasons, the OBA supports the powers of court security officers to search members of the public entering into the courthouse by subjecting them to metal detectors and scanning their property. We support the power to search without warrant any person who is on court premises, or their property. In addition, we recognize the need in certain cases to extend search powers beyond the walls of the courtroom and into adjacent areas, subject to clear and constitutionally valid limits.

While we support these necessary security measures, we wish to point out two related issues: (1) streamlined access for lawyers, and (2) protecting clients' right to confidentiality and privilege.

An efficient court system requires lawyers and other officers to be able to enter into a courthouse in a streamlined manner. Permitting streamlined access allows cases to start on time, reduces court downtime and saves clients money.

There are many instances, particularly in urban centres, where access to the court grinds to a halt while the public or potential jurors are screened at the door. The current practice in Ontario is that lawyers who present official identification issued by the Law Society of Upper Canada to security officers may enter the courthouse without waiting in line. This practice exists under a courtesy arrangement between the bar and local court security officers but is not currently found in legislation. The current system works well from the perspective of the profession and, as far as we know, has not given rise to any concerns on the part of court officers. We therefore ask that the current arrangements be expressly preserved in legislation or through regulation.

The second issue we'd like to draw to your attention is protecting clients' right to confidentiality. Confidentiality and privilege are also fundamental to the proper functioning of our legal system. As the bill is currently written, it could require individuals entering court to reveal privileged information either by virtue of having written material reviewed in a search or by having to reveal why they're entering the courthouse in order to satisfy the officers that they do not pose a security risk.

In our written submission at page 6, we propose language that exists in other Ontario legislation that will ensure that the act does not operate so as to require disclosure of any privileged information.

The second perspective that we as lawyers have on the bill stems from our commitment to defending the open court principle. As much as we are concerned about safety, we are also committed to ensuring that courthouses remain open to the public and that access to justice be unimpeded.

The open court principle is a cornerstone of our system of justice. It ensures that justice plays out in the full light of day. Allowing the press and the public unimpeded access to the courts is an essential check on power. The open court principle, though, is under creeping attack. We see this through applications for sealing orders, witness exclusion orders, publication bans and, in civil cases, the increasing tendencies of corporations to exclude disputes from the court system altogether through the use of arbitration, designed primarily to shield the process and the outcome from the public.

The bill currently requires anyone entering or attempting to enter premises where court proceedings are conducted to produce identification. The Ontario Bar Association opposes this identification requirement. The identity of a person who wishes to observe court proceedings is irrelevant to security and, to put it bluntly, is no business of the state. Members of the public should be able to access court proceedings anonymously. They may wish to do so for reasons that we approve of or reasons that we disapprove of; that is their prerogative.

Whenever a law requires identification, which this bill does, it is important to ask the following questions: What happens if an individual doesn't have the required identification? What will this do to the right of the indigent to attend in court? Can someone be excluded from attending because they're associated with an accused? What will happen with the information that is collected? Will it be checked against a database or stored for future use? And, most troublingly: Will a person's attendance in court at a particular time be used as part of a criminal investigation or used to commence one?

These questions impact access to justice. Again, I emphasize that we do not believe that identification should be requested at all upon entering the court. I do point out, however, that the OPA fully supports the current practice of requiring identification from lawyers and other officers of the court, for reasons I have already stated.

A question related to identification is: What information may be required under subparagraphs 138(1)1(i) and (ii)? That is the provision that says that a person entering the court may be required to provide information for the purposes of assessing whether the person poses a security risk. It is important to state in the law or the regulations what specific information may be requested for the purposes of assessing security risks. One can imagine questions such as: What is your purpose for attending here today? How do you know the accused? Have you ever committed a violent crime? Such probing questions could deter someone from attending at court.

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The Chair (Mrs. Laura Albanese): You have about a minute left for the presentation.

Mr. David Sterns: Thank you. The OBA would be pleased to assist in finding the proper balance between appropriate information-gathering and observance of the court principles.

Those are the main points that we wish to cover today. In our written submission, we outlined some other points that I would simply like to draw to your attention. The first relates to the vagueness of some of the language in the bill—in particular, the term "premises." This is the touchstone for the right to perform a warrantless search. The term "premises" is undefined and it is vague.

A second point that we make is that there should be notice posted at the entry of the courthouse warning people that they may be subject to a search and that they may be arrested if illegal items are found on their person. This notice will help ensure the constitutional validity of the proposed law.

A third issue concerns situations where a member of the public abandons the attempt to enter the court facilities. If the person turns around, there's no reason to perform a warrantless search.

In closing, I would like to thank the committee for inviting the Ontario Bar Association to participate in this process. The OBA supports the repeal of the Public Works Protection Act and the tailoring of legislation specific to the courts. We look forward to continuing to work with this committee to ensure that the bill strikes the necessary balance between security and openness that are both essential to our judicial system.

The Chair (Mrs. Laura Albanese): Thank you. This round goes to the NDP.

Mr. Jagmeet Singh: Certainly. Thank you very much. Once again, thanks for attending.

Just to get into some questions regarding some of the content of the bill, you've addressed the issues surrounding identification. Just surrounding the issues where information is requested—citing 138(1)1(ii), "to provide information for the purpose of assessing whether the person poses a security risk": If you could just highlight the difference of how the system currently works and if that is used at all and if there are any issues with that, and the problems that arise with requesting that information.

Mr. Paul Sweeny: With respect to the way that the system currently operates, I'm not aware of officers asking for any information or identification of people simply passing—

Interjection.

Mr. Paul Sweeny: Oh, sorry. With respect to the way the system currently operates, my understanding in Hamilton, where I practise, is that people are screened before they go in, but there are no questions asked once you're inside the courthouse about what you're doing. There's no requirement for identification or anything like that arising, as far as I'm aware. So that situation—right now, that doesn't happen. In fact, I would think there would be an issue about that.

Mr. Jagmeet Singh: What would the problem be, in your mind, with respect to requiring that information?

Mr. Paul Sweeny: The practical problem is that the courthouse is a public space and people are entitled to be there for whatever reason they wish to be there. To the extent that someone doesn't have identification, they may be precluded from being there. There are often children, groups that go through, that don't have identification.

There are people who just don't have that identification with them and are in there.

To the extent that questions are asked of people who are just in there—maybe it's a parent of an accused or something who's maybe not sophisticated and is intimidated by those questions—they should be free to be there, observe what goes on in the courts, without having to give any explanation as to why they're there or who they are.

Mr. Jagmeet Singh: So do I take it that the OBA does not approve of that section that requires the production of identification, and a section which requires the providing of information?

Mr. Paul Sweeny: The identification, we disagree with. With respect to the information, I think there has to be some understanding, some looking at of what exactly that information is. So we would suggest that there be a regulation to define what specific information can be requested and in what circumstances.

Mr. Jagmeet Singh: Okay. With respect to access to courts and maintaining that access to justice and access to a public court system, what's your position on reasonable accommodations for religious articles of faith, including a kirpan, a turban or something like a hijab?

Mr. Paul Sweeny: I'm going to ask Ms. Milne to respond to that question.

Mr. Jagmeet Singh: Certainly.

Ms. Cheryl Milne: Yes. A courthouse in Ontario could not be considered truly open if we do not respect the diversity of the people in Ontario. At stake are both religious freedoms and equality rights in terms of accommodating those kinds of religious differences, for example. We would ask that we need to work with all of the participants to arrive at a balanced approach to that. The Supreme Court has pronounced on this issue in terms of the Multani case in terms of the school setting, and we say that a similar approach needs to be taken with respect to courts.

Mr. Jagmeet Singh: Okay, thank you. Just one last—

The Chair (Mrs. Laura Albanese): No, sorry. The time is up, and I have to keep it to time. I apologize. I can't make the committee run behind.

Mr. Lorenzo Berardinetti: Thank you, Madam Chair.

Thanks for coming out today. I've met with several crowns, and they are concerned. I live in Scarborough, and there's a court in Scarborough, a big facility on Eglinton Avenue near Warden. Beyond what you've stated, is anyone else exempt—for example, crowns, judges—in your proposal?

Mr. Paul Sweeny: Court officers include judges and crowns. Crowns are also lawyers; as court officers, they would be exempt.

Mr. Lorenzo Berardinetti: But when they come in in the morning, is there someone, a security guard, who would make them go through a scanner?

Mr. Paul Sweeny: If they're exempt, then they needn't go, if you're concerned about—I can tell you that in the courthouse in Hamilton, because I'm a member of the law association, I have a card that I can go into the court any time I want to go into the court. Similarly, I believe the crowns have a card that entitles them to access 24 hours a day into the courthouse. Because we are officers of the court, that's where we do our business, so we are entitled to go in there, and we do that. I'm just not sure I follow the issue.

Mr. Lorenzo Berardinetti: I'll get straight to the point. I have that same card, and a couple of years ago, before I came here to the Legislature, I used to practise law. I would go in, I would show the card, and they would say—it happened to me a few times—"Sorry. Get in line." Maybe it's different in Scarborough, but I have the card from the law society, I show it to them, and they say, "Sorry. Get in line." I had to go through a scanner, and so did my briefcase, very similar to an airport.

Ms. Cheryl Milne: I think what we're saying is that that's part of the problem with the discretionary nature of that right now. Actually making it more formalized that court officers are permitted access might prevent something like that from happening.

Mr. Lorenzo Berardinetti: But if I was to forge—

The Chair (Mrs. Laura Albanese): You have 10 seconds left.

Mr. Lorenzo Berardinetti: Okay. I just want to thank you for being here, and we can talk later on, perhaps, outside of here.

The Chair (Mrs. Laura Albanese): The PCs may proceed.

Mr. John Yakabuski: Thank you very much, gentlemen and ma'am, for joining us today.

I just want to clarify one thing. You used the word "require." The act, as I see it, the amendments, "Subsection 137(2) may exercise the following powers if it is reasonable to do so for the purpose of fulfilling those responsibilities." There's nothing that I read in here that means that you're going to be asked for ID or you're going to be searched. You may. If it is deemed by the security people in the exercise of their responsibilities under the Ontario act in relation to the Ontario Provincial Police responsibilities under subsection 137, they may ask you for identification.

Interjection.

Mr. John Yakabuski: I'm going to ask a couple of questions.

They can do that now, I believe, under the act.

Mr. David Sterns: That's correct.

Mr. John Yakabuski: So I want to clarify that that's not exactly a change.

The other thing I have a concern about is with the searching. So you don't want to have the powers of searching, but if someone was in the courthouse common area and happened to make a statement, you know, "I'm going to bomb this place," and then they want to leave, you don't think people should have the right to search their vehicle to see if there's a bomb in the car or whatever? If they're in the general parking facilities of that facility, you don't think the authority should then have the right to actually search that vehicle, and let that

person drive away with, maybe—because I'm hearing the worst-case scenarios from your perspective; I want to throw the other ones back out there and ask you. If we don't have the tools in the toolbox to be able to provide security, if we have those taken away, even if they're used in a very discretionary manner—if they're gone, then we don't even have that discretion as security people. I just want your response to that, if I could.

Mr. David Sterns: Right. It's very important to understand that we do favour the right to search. We're simply against the identification requirements writ large, as it's currently written.

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So in your example, first of all, the person who makes a threat to blow up the place should be dragged out by the police and arrested, because that is itself a crime. There's no issue about that. That person could, in our submission—

Mr. John Yakabuski: Or if they even mused about it?

Mr. David Sterns: That person or any other person can and should be searched if they're in any way a threat coming in or whether they're on the premises after entry. So there's no issue there whatsoever.

The first question you asked, though, is about the identification. It is in the Public Works Protection Act that court security can request identification. Our position is simply this: We think the PWPA should be repealed, and one of the reasons is that that's just not an appropriate thing to request of somebody entering into a courthouse. It may be perfectly appropriate for someone who wants to go into a nuclear facility, but not in a courthouse.

You also raised the point about the act saying that they "may" be required to produce identification. That's true, but, as we read it, they could effectively ask anybody they wanted, or everybody.

The Chair (Mrs. Laura Albanese): Thank you. Sorry, but time has expired. Thank you very much for appearing before our committee today.

GURSIKH SANGAT HAMILTON

The Chair (Mrs. Laura Albanese): We'll now call our next deputant, from Gursikh Sangat Hamilton. Good afternoon.

Mr. Manjinder Singh Dhinsa: Good afternoon, Madam Chair.

The Chair (Mrs. Laura Albanese): Welcome to our committee, and I would please ask you to state your names for the purposes of Hansard recording. You will have up to 10 minutes for your presentation, followed by 10 minutes of questions by all parties. You may begin any time.

Mr. Manjinder Singh Dhinsa: Good afternoon to all the members of the committee. Firstly, thank you for giving us the opportunity to speak and present here today. My name is Manjinder Singh Dhinsa. I am the youth adviser for Gursikh Sangat Hamilton and the adviser for the Hamilton Punjabi Sports and Culture Society. Present with me here today is Sukhdeep Singh Dhaliwal. He is the policy adviser for Gursikh Sangat Hamilton. Over here I have Rampal Singh Dhillon. He is the director of Baba Budha Gurdwara, which is based in Stoney Creek. And here I have Jasbir Singh. He's the president of Gursikh Sangat Hamilton.

Due to the fact I have Bell's palsy and I have a facial paralysis, I'm going to have Sukhdeep Singh Dhaliwal carry on with the presentation today.

Mr. Sukhdeep Singh Dhaliwal: Thank you, Manjinder, and thank you very much, members of the committee.

I begin by thanking the committee for providing us with this opportunity for input at a time when a very crucial amendment to the Police Services Act of Ontario is being considered. The addition of sections 138 through 140 to part X of the current Police Services Act will provide, we believe, streamlined guidance to the security personnel ensuring security in and around Ontario's courthouses. Proper amendment to the act, we believe, will provide specific authority to the officers and put an end to the arbitrary decision-making that has thus far resulted with respect to the issue of the kirpan, largely under the general scope of section 137 of the act as it stands now.

The issue of the kirpan and courthouse security has been a constant source of frustration, harassment and disappointment to many among the sizable population of the Ontario Sikh community. Despite clear rulings from the Supreme Court of Canada and the various human rights tribunals on issues either directly linked to kirpans or generally linked to freedom-of-religion issues and accommodation, often militating in favour of an accommodations policy towards kirpans at public institutions, Ontario's courthouse security officers continue to apply a differential and often discriminating policy towards Sikhs who wish to enter courthouses with their kirpans.

In some Ontario courthouses, Sikhs are not allowed to enter with their kirpans at all. In others, some Sikhs are allowed in with their kirpans while other Sikhs are not. Yet in other courthouses sometimes Sikhs are allowed to enter with their kirpans, while at other times they are not. In the Supreme Court of Canada and the Federal Court in Ottawa, Sikhs seem to have no problem gaining entry with their kirpans. So the ad hoc decisions seem to be entirely dependent upon the individual security officer's personal beliefs and whims.

Kirpans are allowed in the Parliament of Canada, the Ontario Legislature, and indeed in many other provincial Parliament buildings across the country. As a matter of fact, some of our members of Parliament and members of provincial Parliaments wear kirpans, and they seem to have no problem gaining entry to the Parliaments.

The arbitrary nature of the policy, when implemented to refuse entry to kirpan-wearing Sikhs into Ontario courthouses, directly violates the instructions of the Supreme Court of Canada in some of the famous cases, like Multani in 2006; Syndicat Northcrest and Amselem,

2004; and the various human rights tribunals, as in the case of the Ontario Human Rights Tribunal in the case of Pandori and the Peel board of education, which actually is a case that goes all the way back to 1990.

The arbitrariness we believe results from the lack of clear instructions to court security officers about the law in Canada on the treatment of kirpans as enunciated by our apex court, the Supreme Court of Canada.

The existing section 137 of the act, through subsections (1) through (4), whereas it requires officers to ensure the security of judges and other persons in courthouses, also simultaneously allows them full discretion through section 137(4) in "determining appropriate levels of security...." No guidance is provided regarding the special status of the kirpan. As a result, well-meaning security officers, either innocently ignorant of the significance of the kirpan or of its judicial treatment by our Supreme Court, often decide to err on the side of safety. Viewing it as a common weapon and acting with an abundance of caution, they arbitrarily refuse entry, thereby disenfranchising a large number of Canadians from access to and participation in the delivery of justice in the province of Ontario.

The kirpan is an inseparable article of the Sikh faith. While ordaining the Khalsa in 1699, the 10th guru of the Sikhs, Guru Gobind Singh Ji, made the kirpan an essential requirement for the Khalsa Sikhs. The word "kirpan" itself is a combination of two words: "kirpa," meaning "mercy and benevolence," and "aan," meaning "honour." The Supreme Court of Canada has accepted this fact in the Multani decision that I spoke about, at paragraph 37 in that judgment. The kirpan is a continuous reminder to a Sikh about the two virtues that he or she is to keep front and centre in his or her daily dealings. Once initiated, a Sikh is required to wear a kirpan at all times. To require a Sikh to remove his or her kirpan is to force a Sikh to violate a crucial tenet of his or her faith. Canada's courts and tribunals have well understood the importance and inalienability of the kirpan vis à vis the Sikhs.

Multani was a case about the religious right of a Sikh student to wear his kirpan to his school. The Supreme Court of Canada decided in favour of the student, mandating the school board to change its policy of banning kirpans. Justice Abella, holding that the school board's policy was unreasonable, at paragraph 109 of the judgement said: "It is difficult to imagine a decision that would be considered reasonable or correct even though it conflicted with constitutional values." The majority opinion held that the banning of the kirpan was not proportionate to the professed objective of the school's policy for security maintenance. Ruling on the gravity of the appellant's religious rights violation, the majority again held, at paragraph 40 in that ruling:

"Finally, the interference with Gurbaj Singh's freedom of religion is neither trivial nor insignificant. Forced to choose between leaving his kirpan at home and leaving the public school system, Gurbaj Singh decided to follow his religious convictions and is now attending a private school. The prohibition against wearing his kirpan to school has therefore deprived him of his right to attend a public school." Gurbaj Singh was the appellant in that case.

In Amselem, a leading authority on religious freedom in Canada, the Supreme Court, giving a wide reading to the meaning of religious freedoms at paragraph 46, held that an appellant only needs to establish that "he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or in conformity with the position of religious officials."

So on the authority of Amselem, as long as a Sikh establishes that he or she sincerely believes that a kirpan is an essential article of his or her faith, it is not up to the state and its authorities to question the basis of that faith, and the belief, then, is duly protected by the religious freedoms guaranteed in our Charter of Rights and Freedoms. That case was heavily relied upon by the Supreme Court in the Multani case, which came later, in which it overturned the school board's policy of banning kirpans on the property.

In Pandori, which was an Ontario Human Rights Tribunal case back in 1990, the tribunal overturned the Peel District School Board's policy of disallowing kirpans on its property. On appeal, the Divisional Court of Ontario agreed with the tribunal and the Ontario Court of Appeal further refused an appeal, thereby confirming the decisions of the tribunal and the Divisional Court on that matter. The tribunal held that the Peel board's amendment to its policy number 48 prohibiting kirpans infringed the Ontario Human Rights Code and ordered that the offending portion be deleted from the policy and funds be made available to safeguard both religious freedoms and safety at the same time. This case has also been referred to by the Supreme Court in many of its decisions dealing with religious rights, including the Multani case, at paragraph 60 in the Multani ruling.

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It is submitted that for all pertinent purposes, Ontario's courthouses are in the same category of public institutions as are its public schools. These institutions are funded by the public, they are for the benefit of the public and they are composed of the members of the public. Thereby, they deserve equal, similar legal treatment on the issue of the kirpan.

The current initiative undertaken by the Ontario government to amend the Police Services Act provides the much-awaited opportunity to enunciate a clear policy with regard to kirpans, thereby bringing Ontario courthouses in compliance with Canadian law.

It is in this background, as we celebrate the 30th anniversary of the adoption of the Canadian Charter of Rights and Freedoms, that we propose the following:

—that the act be amended with the addition of a subsection that provides for an express exemption for kirpan-wearing Sikhs from the no-weapons policy of admission to Ontario courthouses;

—that courthouse security officers be trained or advised though educational or instructional memos, or by any other means that the government deems appropriate, about the special religious significance of the kirpan for Sikhs; its express recognition as such by the Supreme Court of Canada; the fact, as upheld by the Supreme Court of Canada, that a kirpan is not a weapon in the usual sense of the term; and the importance of not disallowing a Sikh from entering a courthouse solely on the basis that he or she wears a kirpan; and

—that the government of Ontario, through the amended act or in any other way that it deems fit, ensure that an express, uniform, clear, consistent and province-wide policy of unrestricted courthouse access to kirpan-wearing Sikhs is implemented and followed forthwith.

Those were my submissions, subject to the committee's questions. Once again, I'd like to thank the members of the committee for this time and this opportunity.

The Chair (Mrs. Laura Albanese): Thank you. The Liberals will begin this line of questioning. MPP Soo Wong.

Ms. Soo Wong: Thank you very much for coming to the hearings. I just want to ask the deputants a couple of questions. First, does your organization support the spirit of this proposed legislation?

Mr. Sukhdeep Singh Dhaliwal: When you say "spirit," are you implying the issue of the kirpan as it is—

Ms. Soo Wong: If the legislation, with your suggestion and recommendation, included the kirpan, would your organization support the proposed legislation?

Mr. Sukhdeep Singh Dhaliwal: Absolutely. We are very much in favour of streamlining the vague requirements of section 137 as it exists now, to give that some sort of a clothing, if you will. The kirpan issue, if it is accommodated to the satisfaction of the Sikh community, we would be very much in support of that.

Ms. Soo Wong: We heard it very clear, your suggestion.

My other question to you, sir, is, does your organization—because there were also some comments made earlier this morning about head gear and other religious practices—support any kind of accommodations, not just exclusively for kirpan?

Mr. Sukhdeep Singh Dhaliwal: If I understand the question correctly, kirpan is one of the five articles of faith. It seems that so far, the main problem arises with the misinterpretation of kirpan as a weapon, and therefore, Sikhs are being disenfranchised.

In terms of, would there be some sort of accommodation, would there be some sort of conditions, if you will, whereby a person might have to declare they have a kirpan and so on—those issues, I think, would be dealt with as they arise, but I don't see in principle that there would be any opposition, at least from our organization, in terms of a dialogue on that issue.

Ms. Soo Wong: I don't think I asked the question clearly, Madam Chair. I think the question I have is that if the proposed legislation includes the kirpan—we also heard this morning about other accommodations. I'm just asking, does your organization have any difficulty supporting legislation that accommodates not just kirpan, but other religious—

Mr. Sukhdeep Singh Dhaliwal: Oh. Absolutely.

Ms. Soo Wong: Okay. I just want to make sure—

Mr. Sukhdeep Singh Dhaliwal: We'd be very much in favour of that.

Ms. Soo Wong: —that when we talk about accommodation, like your reference to the charter, that we need to accommodate everybody, not just one particular faith or community. That's what I wanted to make sure. Thank you very much.

The Chair (Mrs. Laura Albanese): Thank you. I will pass it on to the Conservative Party.

Mr. John Yakabuski: Thank you very much, gentlemen, for joining us today. I'm familiar with the 2006 decision by the Supreme Court of Canada with respect to the definition of a kirpan as an article of faith and not a weapon. We had a gentleman from the World Sikh Organization as well earlier today asking for the same accommodation, the same exemption for the wearing of the kirpan in a courthouse. We subsequently had a deputation from the deputy commissioner of the Ontario Provincial Police, and he raised, in my opinion, a very legitimate concern—and I did confirm with my colleague Mr. Singh earlier that if he wishes to board a plane he has to remove the kirpan, religious beliefs or not.

The deputy commissioner of the OPP raised the issue that the concern that they have—and they are the ones responsible for courthouse security either by delegation or the ultimate authority. They have very significant concerns with respect to—not the wearer of the kirpan, because they're very devoted to their religious beliefs that it is not a weapon, and you've explained their reasons for wearing it and also by definition what it means. But the ability of a third party to secure that kirpan and use it as a weapon is the big concern that the OPP have. So if they were to give a blanket exemption for the kirpan, they would be allowing—not to be used by the person wearing it, but if a so motivated other person was able to extract that kirpan from the person wearing it, they could use it as a weapon. That is the concern that was put to us by the OPP. So I'd like you to, if you could, respond to that, if you might.

Mr. Sukhdeep Singh Dhaliwal: First of all, with regards to the question of airline security, one of the factors that distinguishes is that the airline industry is private corporations, with some exceptions, whereas—

Mr. John Yakabuski: But they're governed by the law of the land.

Mr. Sukhdeep Singh Dhaliwal: Well, the law of the land applies to all kinds of things, even restaurants or any place out there, but there are still parameters that distinguish.

In regards to the security aspect, I think the problem that we face is the viewing of the kirpan, again, from a biased perspective of it being a weapon.

For instance, in courthouses we've got all kinds of cutlery; we've got glasses, tumblers. People, if they want to use them as a weapon, could smash them and use the sharp edge. People have pens, people have canes, walking sticks, all kinds of things that could lend themselves very easily, to a willing individual, to be used as a weapon.

However, we seem to overlook—if that is what the OPP addressed, then they seem to overlook all of those, but they seem to zoom in on the kirpan. We submit very respectfully that it seems that the starting point there is a biased perception of this: "We don't care what the Supreme Court says, we don't care what the Parliament says, we don't care what the courts allow in Ottawa, but we're still going to look upon it as a weapon in clear defiance of the Supreme Court's instructions on grounds that are protected by the charter." So there are major differences there.

The Chair (Mrs. Laura Albanese): Thank you very much. Now I would pass it to the NDP.

Mr. Jagmeet Singh: Thank you. I just want to touch on some other points and come back to the kirpan. Have you or your organization turned your mind to the requirement of producing identification in courthouses? Any views on that?

Mr. Sukhdeep Singh Dhaliwal: Could you please explain the question a bit more?

Mr. Jagmeet Singh: There is a requirement in this bill that requires producing identification, or it may be required. So there's a discretionary power given to the court security to require a person to produce identification or to provide reasons or information why they're attending the court. Have you or your organization turned your mind to those requirements?

Mr. Sukhdeep Singh Dhaliwal: I do recall us having some conversations around that issue, and I think the consensus was that if courthouses are venues where justice is conducted, where justice not only ought to be done but ought to be seen, and where we have free access to everyone, all individuals, then requiring people to produce their identification seems counter-productive at the very least, but also could be used as a tool, or misused as a tool, of profiling later on. It just didn't seem appropriate to us that the authorities would require or need people's names. As long as individuals are there and they're compliant with the law, it shouldn't matter whether or not they have a particular identification with them. So I think we're, in principle, against that.

Mr. Jagmeet Singh: Okay. And then just with respect to the issue of the kirpan and safety, you touched on it very well in describing the many other issues that arise in a courthouse that are never raised, like a cane, like a glass that's available that could be used as a weapon by someone who has that desire. Just to allay any concerns, though, would you be able to suggest any reasonable accommodation to prevent maybe a third party from accessing a kirpan?

Mr. Sukhdeep Singh Dhaliwal: I think the courts have already spoken about that in various decisions. I don't have the details with me right now, but I'm sure that once, in principle, we accept that we, as a government, are going to enforce the law as enunciated by the Supreme Court, then how that law is implemented in terms of the administrative nitty-gritty could be figured out once we get to that bridge and we can cross it.

I don't see, in principle, any objection to that so far.

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Mr. Jagmeet Singh: Okay. With respect to kirpans being worn in other jurisdictions, if you could just clarify where kirpans are currently allowed, in terms of public institutions.

Mr. Sukhdeep Singh Dhaliwal: Right. I recall a couple of years ago I was in Ottawa visiting our national monuments with my father, who's an Amritdhari Khalsa Sikh, who wears a kirpan. We didn't seem to have any problem at all. As a matter of fact, the officers knew what the object was. They didn't say it was a dagger or a weapon. They knew the term "kirpan," and they were quite accommodating. They let us into the Supreme Court of Canada, the federal court.

I also know that in some courthouses—for example, in Brampton—certain individuals, if you're an officer of the court—if I was a lawyer or somebody who works for the courthouse, I would not have a problem getting the kirpan in, whereas if I was an individual member of the general public, I would not be allowed in. In some other courthouses, it depends on who the officer is on duty. Some officers will not have a problem; others will. So there seems to be very inconsistent, ad hoc decision-making going on.

What I found ironic, if you will, is that in areas where Sikhs don't have a sizable population geographically, they don't seem to have a problem with the kirpan, whereas in areas like Peel, where the Sikh community is quite flourishing, there seems to be this discrimination rampant, even though it should be the other way around. It's one of those peculiar things that I couldn't help noticing.

The Chair (Mrs. Laura Albanese): I would like to thank you for appearing before the committee today. Unfortunately, our time together has expired.

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair (Mrs. Laura Albanese): I would call upon the next presenter, from the Canadian Civil Liberties Association. Again, I would ask you to state your name for the purposes of Hansard, and you may begin your presentation any time. You have up to 10 minutes.

Ms. Nathalie Des Rosiers: My name is Nathalie Des Rosiers. I'm the general counsel for the Canadian Civil Liberties Association. I'm accompanied by Abby Deshman, who is our director of public safety; and Vladimir Shatiryan and Sheetal Rawal, who are students at Canadian Civil Liberties. Merci beaucoup. Thank you

very much for allowing Civil Liberties to appear before you.

L'Association canadienne des libertés civiles accueille favorablement l'abrogation de la Loi sur la protection des ouvrages publics, et nous sommes particulièrement contents de célébrer cette abrogation.

Mr. John Yakabuski: Excuse me—

The Chair (Mrs. Laura Albanese): It's only the beginning—

Ms. Nathalie Des Rosiers: Yes, I'm moving to English.

Mr. John Yakabuski: Okay, because I don't have any translating equipment here.

Ms. Nathalie Des Rosiers: I'm moving to English right away. I just said that I was pleased that the Public Works Protection Act was being abrogated.

Mr. John Yakabuski: That's what I thought you said.

Ms. Nathalie Des Rosiers: That's right. So you feel better, now that you—you are almost bilingual.

Interjection.

Ms. Nathalie Des Rosiers: Yeah, yeah, that's good.

Anyway, we welcome this repeal, certainly, and we also applaud the government's commitment to passing targeted legislation that specifically addresses the security needs of courthouses and power-generating facilities, as opposed to having a general piece of legislation which was much more unwieldy.

However, we have some concerns, and you can see our concerns. We have suggestions for improvement to the bill, and they are listed at the bottom of page 1 of our mémoire that has been circulated. I will make three brief preliminary points and then just explain why we think the legislation could be improved.

My three points: The first one is the importance of the open court principle. Certainly, I think you've heard the Canadian Bar Association expressing it. I want to add just one point on the open court principle. The point is not to impede access to the court but, on the contrary, to accommodate and facilitate that access to the court, for many reasons. First of all, it is incumbent to ensure the proper workings of the court; it ensures the legitimacy if people can come and see what's going on. It also is important because it demystifies the working of the courts if people can come and see what's going on. Indeed, there's a public interest in facilitating and ensuring that people have free access to it. So it's in that context that we should look at these provisions, with a specific worry about what will be the impact on the access to court. Certainly, I think nobody will go to court if it's dangerous, so we recognize that it's important to protect safety, but it must be done in a context where the open court principle is a core value of our society.

The second preliminary point I want to make is that the Criminal Code continues to exist; that is, this legislation is not the only source of power for law enforcement. It's important, when we imagine scenarios—which we should—that we don't forget that there's a Criminal Code out there that allows police officers in exigent circumstances to search and to arrest. If somebody is uttering threats, that's a criminal offence, and so on. So I'm going to refer to the fact that at times it may be that this legislation reaches a little too far, maybe forgetting that there are already, in the Criminal Code, sufficient provisions to respond to the perceived dangers.

Finally, my third preliminary remark links to the fact that the powers that we're having here—powers of search, powers to demand information, powers to demand identification and warrantless searches—are all extraordinary powers, and those are the normal powers that we give police officers. So it's important that we recognize that our charter requires that extraordinary powers be used not only reasonably—and the word "reasonable" figures here too—but it has to be justified in a free and democratic society. To assert whether or not it's justified, you need to have evidence of what you're trying to do, it has to be rationally connected and it has to limit the right as little as possible. There's an obligation to not go too far, and that's a little bit where we're going to go.

What we've done to prepare for this is to look at all the other jurisdictions across Canada. This has been a subject of recent amendments. None of them provide for warrantless search powers of vehicles—none of them across Canada. None of them provide for the demand for information. Some of them provide for the powers to demand identification. None of them have been challenged in front of the courts. Our position and the way in which we've approached this idea of identification is that it's a very dangerous precedent here.

People should be able to go to court in an anonymous fashion because that's the way in which the court system works. If you start asking for identification, people will know whether or not someone has been coming to court and for what reason. We ought not to do this. There is a right to anonymity to access public buildings, and unless you have good reasons and you can show why this is important, then you ought not to go that route. It's the beginning of asking for identification for people everywhere all the time, and I think that's a route where we don't want to go.

Certainly, I think if someone is well identified as being a threat, he or she will be identifiable physically, and that's, I think, the way in which we should approach this. The requirement that everyone be subject to producing identification will delay access to the courts and is incompatible with a free and open and welcoming court system. So that's the reason why we object to it.

The six provisions that you see on page 1 are essentially our suggestions to improve the act. We suggest to remove the powers to demand general information. We suggest a removal of the identification requirement, as I explained, and of the power to search vehicles. That's not consistent with what's going on across Canada and it's not necessary if you look at what powers currently exist in the Criminal Code.

All the statutes across Canada are focused, and we agree with this, with the fact that there ought not to be weapons in courthouses. The framing is, we allow and

we should allow screening of people as they enter a courthouse—and we have some suggestions on how it must be done and so on—to detect whether people are carrying weapons. That's how the legislation should be looked at. It's the possession of weapons that is dangerous in a courthouse; that's the one that we should look at.

Random searches: Our third point there is to restrict and to frame random searches. Our Supreme Court and section 8 of the charter do not like random searches very much because it subjects the citizens to the whim and the arbitrariness of being searched. In a way, the only way that you can accept random searches is that if they are done in a systematic way: Either it's every one or it's every second one or it's every fifth person, so there's not the feeling that you're being targeted because of what you wear or because of who you are and so on.

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The way in which a random search that is formalized is done is something that we accept. Everyone passes through the metal detector—no problem. But it has to be to inspect whether people are carrying weapons, and it must be done in a way that people know in advance. It prevents a lot of negative interactions and conflict zones if people know in advance—it's written outside, and it says, "When you enter the courtroom, you will have to pass through a metal detector." People know, and they know that they will be searched in that context. Their purses will be searched, their possessions will be searched, through the metal detector, and they know that in advance. It would save a lot of aggravation.

As you see, we do support the idea that we have to incorporate measures for judges, security officials and other appropriate authorities to accommodate religious beliefs. I think you've heard about the kirpan for sure and other beliefs that require accommodation.

Finally, our number five, just to finish on this, is that if a police officer suspects on reasonable grounds that someone is carrying a weapon, in our view, it's appropriate to ask the person to go back to security and be checked to see whether they're carrying a weapon.

So the framing is, weapons are wrong in the courthouse—they don't belong there—but everyone else is welcome. That's essentially the position of the Canadian Civil Liberties Association.

The Chair (Mrs. Laura Albanese): Thank you very much for your presentation. The Conservatives have the first round.

Mr. John Yakabuski: Thank you very much for joining us today. I want to first thank you and commend you for your support of freedoms during and in the time following the G20 summit. We all know that that's part of the impetus that has us here today, what went on here in 2010.

One thing I did want to point out about the changes being made and the repeal of the Public Works Protection Act: It now is narrowing the scope specifically to courthouses and generating facilities, most particularly nuclear.

I have a question about the requirement of ID. No one really believes that everybody is going to be asked for ID, but under certain circumstances, if someone is considered to be acting suspiciously, this law would give them the power to do that. I just want a little more comment on that, the need of security to have some ability to make judgments.

The other thing I want to ask you about—because I know that your organization specifically called on the provincial government to formally apologize for its role in the use of the Public Works Protection Act in the violation of constitutionally protected rights during the G20 summit. We share that view. I think most people in this Legislature share this view. Has the government ever formally apologized for its use of this law with regard to the G20?

Ms. Nathalie Des Rosiers: Not to our knowledge.

Mr. John Yakabuski: That's regrettable. So if you could maybe comment on the ID part?

Ms. Nathalie Des Rosiers: Well, in our view, identification is not particularly a good tool of law enforcement in a courthouse. As I said, the Criminal Code is still there for police officers to do the enforcement that they need to do. And it's in that context—you know, people are obliged to identify themselves if they are going to be arrested. In that context, they have the obligation to identify themselves. Outside of that, when we walk around, we don't have the obligation to identify ourselves.

In our view, if you want to facilitate access to the court, for the reasons that I have explained, it's a better way to ensure that people come to court. They're welcome. They ought to be there to see how it works. To the extent that they have committed a criminal offence, certainly they will be arrested and asked for identification. So in our view, there's no need to demand identification. Indeed, I think in a random—the idea that we should give this power because it probably won't be abused—

The Chair (Mrs. Laura Albanese): Thank you.

Ms. Nathalie Des Rosiers: The problem with this in a context where people come into a public place is the way in which it has happened in the Public Works Protection Act, as we saw around the fence.

The Chair (Mrs. Laura Albanese): Sorry, I have to interrupt you. I said, "Thank you," and that means that the time for the PCs is up.

Interjection.

The Chair (Mrs. Laura Albanese): I understand. Unless you agree that she continues.

Mr. Jagmeet Singh: Yes, I think she should. Not to take away time, but just out of fairness. I can be cut off; I'm just a person on the committee. But a witness should be entitled the fairness of—

Ms. Nathalie Des Rosiers: I will finish quickly.

The Chair (Mrs. Laura Albanese): Thank you.

Ms. Nathalie Des Rosiers: Simply that it creates the interactions. People should know in advance what's going to be the law, and they should not be subject to

random or arbitrary demands. That's what happened around the fence, and that's what people were being asked—"Identify yourself; don't identify yourself"—and it creates chaos.

So our view is, the rule should be the same for everyone, and the Criminal Code is there to provide law enforcement officers with the powers that they need to do law enforcement.

Mr. John Yakabuski: Thank you very much.

The Chair (Mrs. Laura Albanese): Mr. Singh, please proceed.

Mr. Jagmeet Singh: Thank you so much. Thank you very much for being here.

I just want to clarify some questions or some areas. If I understand correctly, the position of the civil liberties association is that the search powers be limited specifically for the search of weapons or something dangerous to the courthouse.

Ms. Nathalie Des Rosiers: That's it. We suggest that you look at the Manitoba legislation that has been recently amended in response to two court decisions. I think, in our view, that's a good model. But I repeat, all legislation across Canada seems to be targeted at—the problem is weapons or dangerous things, but weapons are—

Mr. Jagmeet Singh: Just to cite the Manitoba legislation, the Manitoba legislation is legislation with a very extensive regulation component which actually defines what a weapon is and defines what these items are. That's something you're suggesting would be—

Ms. Nathalie Des Rosiers: In our view, the most clarity avoids problems on the ground, and it prevents some interactions that can be unpleasant. Police officers don't like it either when there are some interactions. People debate whether they should be allowed or not. Clarity, particularly in access to a public space, is important.

Mr. Jagmeet Singh: Thank you. So the way that the section is worded currently in schedule 2, do I understand correctly that the association takes issue with the powers that allow security personnel to require a person to produce identification, provide information, as well as the powers which allow a search without warrant of the vehicle which someone is driving as well as the vehicle in which they were a passenger?

The Chair (Mrs. Laura Albanese): Ten seconds left.

Ms. Nathalie Des Rosiers: Yes. So we object to 138(1)1, 138(1)3 and 138(1)2, so identification, information and search—

The Chair (Mrs. Laura Albanese): Thank you.

Mr. Jagmeet Singh: And would you support accommodation for kirpans—

Ms. Nathalie Des Rosiers: Yes.

Mr. Jagmeet Singh: —and other religious articles?

The Chair (Mrs. Laura Albanese): Sorry, but the time is—

Mr. Jagmeet Singh: Just answer to that.

Ms. Nathalie Des Rosiers: Yes, it is page 1 of our packet.

The Chair (Mrs. Laura Albanese): Thank you for that. Ms. Wong.

Ms. Soo Wong: Thank you, Madam Chair. Just a quick question for you, to the deputant: Does your organization support the spirit of repealing the PWPA?

Ms. Nathalie Des Rosiers: Absolutely. I think we have been asking for the repeal of the Public Works Protection Act. As I say, we welcome it and we're very happy about his.

Ms. Soo Wong: Now, given your recommendations and your proposed amendment, does the proposed amendment and the numerous suggestions being put forth to the committee—does it reflect the McMurtry report and his recommendations?

Ms. Nathalie Des Rosiers: In our view, this does not reflect—our concerns, I think, have been expressed before and continue to be the same. I think the legislation needs to be improved to meet the spirit of the McMurtry report and actually respond to the need to ensure that courthouses are places where people can go. It's important for our justice system and it's important for certainly officers of the court, but it's also important for the public and for the public interest.

Ms. Soo Wong: My last question here is, what I heard you said this afternoon—you do not have a problem with random searches, but if you search for the sake of searching, you would have concerns.

Ms. Nathalie Des Rosiers: Yes. A random search that is formalized, that is either everyone or every fourth person, can be acceptable if people know in advance. People should know that "I'm going to go to the courthouse and I'm going to have to open my purse." If you know in advance, it's far less intrusive than if you don't know or if you arrive and somebody suddenly says, "Hey, you. Step over here. I want to search your purse." That's where there are negative interactions. That's where people, maybe, respond impolitely and it creates a sense—

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Ms. Soo Wong: Just to follow through with this is the fact of how you inform the public. What is the proper way to inform the public? You said you would need to inform the public: by posting signs outside or—

Ms. Nathalie Des Rosiers: Yes, certainly. And I think if it's clear—you need a sign outside, far enough so that people can prepare themselves for what's going to happen to them. If it's the same, we would want a certain level of compliance assurances so that, indeed, the experience of accommodation is being done properly throughout the province and so on.

Once you exercise special powers under our Constitution, you need to do it seriously, so you need to do it in a way that is well framed, that is not excessive and that, also, is being supervised in some fashion.

The Chair (Mrs. Laura Albanese): Thank you very much. Thank you for your time.

Mr. John Yakabuski: Perhaps the government members wanted to take this opportunity to issue that apology.

The Chair (Mrs. Laura Albanese): I can't—I'm on a tight timeline here.

Thank you very much for your time.

Mr. Lorenzo Berardinetti: Madam Chair, point of order?

The Chair (Mrs. Laura Albanese): I'm on a tight timeline.

Mr. Lorenzo Berardinetti: I think the member has to apologize, because he's painting the government as being unreasonable in the questions and in the act.

The Chair (Mrs. Laura Albanese): I appreciate your concerns, in pointing them out, but we're moving forward with the deputations.

CANADIAN SIKH ASSOCIATION

The Chair (Mrs. Laura Albanese): I call on the Canadian Sikh Association to come forward. If you could please state your name fully and your title for the purposes of our Hansard recording. You will have up to 10 minutes for your presentation, and that will be followed by 10 minutes of questioning by all parties. You may begin any time.

Mr. Baljit Singh Ghuman: Thank you very much. My name is Baljit Singh Ghuman, and I'm the chair of the Canadian Sikh Association.

First of all, thank you very much for giving us this opportunity to be here and present the issues on behalf of the Sikh community. Our organization's aim is to actually promote civic engagement and empower communities to address issues related to human rights and social justice.

Our mission is to promote and strengthen multiculturalism in Canada by encouraging and providing the required platform and resources for active participation in social and political activities and bringing healthy changes to our system.

For the last few years, we have been working on various Sikh issues with the community and elected members of all political parties in Ontario. The issues that we have been dealing with have to do with the Sikh articles of faith, also known as the five Ks, and more specifically with wearing the turban and kirpan at workplaces, courthouses and also while riding a motorcycle in Ontario.

We do have a formal presentation, and at this point I will ask my colleague Mr. Manohar Singh Bal to actually continue with the presentation. Thank you.

Mr. Manohar Singh Bal: Thank you very much. As stated already, my name is Manohar Singh Bal, and I am the secretary of the Canadian Sikh Association. We do have a presentation, which we handed out to you earlier. I will go to page 3, and take it from there on.

It is a religious requirement for the Sikhs to wear the Sikh articles of faith. Despite all the guarantees and protections provided before and under the law, Sikhs are facing hardship in practising their religion. It is because the Sikh articles of faith are not recognized in our laws. Our policies do not respond to the needs of the Sikh community.

Although this issue covers many jurisdictions, such as transportation, workplace and the usage of public institutions, our presentation today in front of you only covers one aspect of this issue, and that is the wearing of the kirpan in Ontario courts.

The right to wear kirpan has been recognized. It was in 1981, when Professor Frederick Zemans rendered his decision, as chair of a board of inquiry convoked under the Ontario Human Rights Commission, that a Sikh patient has the right to wear kirpan at a hospital operated by the Workers' Compensation Board.

Professor Zemans stated: "In my opinion, we cannot infringe upon the practices of religious minorities simply because of unreasonable apprehensions of other members of society."

A few years later, another board of inquiry, headed by Dr. Gunther Plaut, determined that Sikh students and teachers have the right to wear kirpan in Peel schools and ordered the Peel board of education to withdraw the offensive policy prohibiting kirpans.

Since then, the Supreme Court of Canada has recognized the right of the Sikhs to wear kirpan. Sikhs can wear kirpan when visiting the Ontario Legislature—and I am wearing one today—and the House of Commons. Sikhs are permitted to wear kirpan at the London Olympics. Yet wearing of kirpan is prohibited in Ontario courts. This is the time for the lawmakers of the province of Ontario to recognize the religious right of a minority and enact law which recognizes the Sikh way of life.

Over the last 25 years, the Sikh community has been working with various stakeholders to address this issue. In a memorandum dated November 29, 1988, the then director, policy and research unit, of the Ontario Human Rights Commission, Ms. Tanja Wacyk, stated, "There appears to be no justification for such a policy, and the Sikh community should be encouraged to work with us in resolving this matter," the matter being that kirpans are not allowed in Ontario courts.

We have been working on this for a long time. We have had many meetings and consultations with successive governments, but none had shown leadership to address our concerns. This is the time for our political leadership to lead in this area.

If I can very briefly say this: With respect to the wearing of the Sikh emblems and the right not being recognized in the laws, when some members of the Sikh community take this either to the Ontario Human Rights Commission or to civil litigation, the negative media publicity which we get harms race relations in this province. Although various governments in the last 25 years have had race relations policies, when the rights of the minorities are not protected and they fight for those rights, as I said earlier, the negative publicity which they get from the media, may that be print or TV or radio, hampers their progress and settlement in society.

Therefore, we recommend the following with respect to wearing of the kirpan in Ontario courtrooms:

Under the Police Services Act, it is the responsibility of each municipal police services board to provide courtroom security. Bill 34 amends the Police Services Act. Section 138 elaborates the procedure to provide

courtroom security. We recommend that the kirpan be recognized in this section of the act, and the Sikh right to wear it should be incorporated in the law, or that a regulation under the Police Services Act, section 135(1), is developed. The Police Services Act, under section 135(1), does have a provision to develop such regulations, prescribing certain standards.

Previously, we mentioned the decision of Dr. Gunther Plaut. During the hearing of the Pandori case at the Ontario Human Rights Commission, Dr. Plaut had a number of questions about the Sikh practices, with reference to the wearing of the kirpan. He wrote to the supreme religious body of the Sikhs in Amritsar, Punjab, India, and sought clarification. We are attaching a copy of the response. We are hopeful this information in our attached letter will help you in your deliberations and decision-making. Thank you very much.

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The Chair (Mrs. Laura Albanese): And thank you for your presentation. Mr. Singh.

Mr. Jagmeet Singh: Certainly. In respect of the recommendations, your organization doesn't take any issue with either the exemption being applied directly to the legislation or the exemption being mandated in a regulation.

Mr. Manohar Singh Bal: No, what we are saying is that it should be clearly stated in the law itself that this is a religious right of the Sikhs and it is recognized as such, and becomes part of the law.

Mr. Jagmeet Singh: With respect to the fact that, though the kirpan is allowed in the House of Commons, the Ontario Legislative Assembly and in the Supreme Court of Canada, and Supreme Court decisions have recognized the nature of the kirpan being an article of faith—that hasn't been sufficient in allowing the kirpan in courthouses?

Mr. Manohar Singh Bal: Not at all. I will say, not only some of the facts which you mentioned but some other vague policies and procedures—we'd rather that be of the Ontario government or of the federal government—sort of talk about all these rights, but when it comes to the implementation of those rights, it is a totally different thing. So those decisions which have been made, for example, even in this case here in the Peel board of education versus Pandori—this was about 25 years ago, but that decision did not encourage the government of that day that, if this is the issue in this particular jurisdiction, we should look proactively in other areas and see where this needs to be incorporated in the law or in the policy. That didn't happen. Again, the case at the Supreme Court or at the Ontario Human Rights Commission is only limited in its capacity to grant these rights to the Sikh community.

With reference to this particular issue, the only way to fully have it implemented universally, throughout the province, is to have it incorporated in the law. Otherwise, what will happen is that one jurisdiction may or may not exempt, and others may or may not exempt. So there will be disparity even within the province with respect to these rights of the Sikhs, and then we will end up fighting each municipality, one at a time.

The Chair (Mrs. Laura Albanese): Thank you. We have 30 seconds left.

Mr. Jagmeet Singh: And with respect to other accommodations, does your organization support accommodations for other religious articles of faith, including the hijab, the turban and the yarmulke? What's your position with respect to accommodations for those who are special needs and require assistive devices, like a cane or a walker?

Mr. Sukhpaul Tut: Sorry. My name is Sukhpaul Tut. Thank you for the question.

Absolutely, we wholeheartedly believe in the values of this province and support equal rights to be attached to all communities. Whether based on race, colour, creed; whether there's a disability attached or not, we support it wholeheartedly.

Mr. Jagmeet Singh: Thank you very much.

Mr. Baljit Singh Ghuman: I just want to add to that that it's for the freedom of religion. It doesn't matter which religion it is. We do support that.

The Chair (Mrs. Laura Albanese): Thank you. We'll pass on to the Liberal Party.

Ms. Soo Wong: Thank you very much for coming before the committee. Just a couple of quick questions: Did I hear correctly that your organization asked specifically to deal with accommodation dealing with the kirpan, dealing with section 138 of the proposed legislation, to be put into the legislation?

Mr. Manohar Singh Bal: That is correct. We are specifically asking for that.

Ms. Soo Wong: If that is included, does your organization support Bill 34?

Mr. Manohar Singh Bal: I guess we will.

Mr. Sukhpaul Tut: Yes, we do.

Ms. Soo Wong: Okay. That's all I wanted to know. Thank you very much.

The Chair (Mrs. Laura Albanese): Okay, we'll pass on to the Conservative Party. MPP MacLaren.

Mr. Jack MacLaren: We've heard the Canadian Civil Liberties Association and I think the Ontario Bar Association express concern about the request to provide identification, the request to be searched—that these were infringements on constitutional rights. Could you tell me, do you have concerns about those rights, that this would—

Mr. Manohar Singh Bal: I guess if the person who is in charge of the security in any particular case, if they want to simply inquire if I'm wearing the kirpan or not—I guess if they want to ask me that, I would not have any specific objection to it. But if he wants to—basically, if what we're asking for is accommodated in the law and then this question is asked of me, I would feel comfortable in answering that.

The Chair (Mrs. Laura Albanese): Any more questions? No. Thank you very much. Thank you for your presentation and for being with us today and appearing before the committee.

Mr. John Yakabuski: Well, I had a question.

The Chair (Mrs. Laura Albanese): You have another question? Okay.

Mr. John Yakabuski: We have time, don't we?

The Chair (Mrs. Laura Albanese): Well, you have—

Mr. John Yakabuski: I just turned it over to my colleague first.

The Chair (Mrs. Laura Albanese): Sorry. Yes, you do have a couple of minutes.

Mr. John Yakabuski: Thank you very much for coming. We've had other submissions very similar to yours with regard to an exemption for the kirpan. I'm reading a letter from your organization to Ms. Ginsburg. It goes on to talk about the rules—it's a question and answer—and the importance and the lack of option when it comes to the wearing of the kirpan for a baptized Sikh. My question is, in the case of the courts today—and some have recognized and given exemptions to kirpans; others have not. It's not an absolute thing, I guess, currently. For a baptized Sikh, would they then have to make a choice about leaving? What has been the practice if they've been in a courtroom that doesn't recognize that it's an article of faith, that they view it otherwise? Courts have been kind of all over the map on this, according to the testimony today.

Mr. Manohar Singh Bal: You mean right now?

Mr. John Yakabuski: Yes. If—

Mr. Manohar Singh Bal: Right now, if you're wearing a kirpan, you cannot go into the courthouse—period.

Mr. John Yakabuski: Right. So what if someone was wanting to go into the courthouse and was met with resistance saying, "You cannot with the kirpan"? What would be the choices left to that person?

Mr. Manohar Singh Bal: Well, there are three ways people have been handling this. One is that they send somebody else if they need to pick up some information, so then they have the choice not to go in. Secondly, there have been some cases where the people have decided not to go, and the case has been decided against them—I mean, they have been found guilty or whatever. That has been one scenario. The third is, there are some people who make the choice of removing the kirpan and leaving it at home or wherever and go in the courthouse without it.

The Chair (Mrs. Laura Albanese): Thank you. I appreciate your time and your answer.

CRIMINAL LAWYERS' ASSOCIATION

The Chair (Mrs. Laura Albanese): We'll now move on to the next presenter, the Criminal Lawyers' Association. We would ask you to come forward. Please state your name fully so that we can have it recorded in Hansard. You will have up to 10 minutes for your presentation. That will be followed by questions by all parties, another 10 minutes for that.

Mr. Howard Krongold: Thank you, Madam Chair. I should say at the outset that I'm probably going to call you "your honour" at some point. I'll apologize in advance for that.

My name is Howard Krongold, and I'm a director of the Criminal Lawyers' Association. First, let me say that I bring greetings on behalf of our association, the 1,000-plus members across this province.

The Criminal Lawyers' Association was founded in 1971 and acts as the voice of the criminal defence bar in this province. We're consulted by every level of government. We appear in courts all across this province representing the interests of our members.

With respect to courthouse security, our members spend their days in the courthouses of this province, and we are certainly one of the beneficiaries of good courthouse security. Our concern, though, is to ensure that there is also a measured and balanced approach to ensuring courthouse security in this province.

There are three main concerns that we have about the proposed legislation. The first one is one that I think you may have heard about today from the Ontario Bar Association and may hear about later from my colleague Mr. Zochodne, that there is no exception in this legislation for counsel.

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I won't go into it in great depth, but obviously lawyers are officers of the court. We're essential justice system participants, and our view is that by exempting counsel you can preserve, first of all, our dignity to enter our workplaces where we're known, where we can be subject to pre-screening by security, and preserve the appearance of independence for our clients.

For a practical matter, it would also help ensure that courts aren't held up—

The Chair (Mrs. Laura Albanese): Excuse me, could I ask you to speak more into the microphone or adjust the microphone accordingly? Some of the members are having trouble hearing you.

Mr. Howard Krongold: Of course. I'll do my best.

The second thing I was going to say is that exempting counsel serves an important practical purpose: It ensures that the courts are not held up by counsel who are having trouble getting in the door because of a long lineup. That sounds like a minor problem, but the courts in this province are, unfortunately, very often backed up, and having counsel arrive 10 minutes late puts an extraordinary strain on the justice system.

It also, of course, would protect client privilege by allowing counsel to enter when they present proper identification and, in my submission, would present no substantial danger to courthouse security.

The second concern that the CLA has about this legislation is its breadth. We agree that it may be necessary to conduct security searches of all persons, obviously subject to exceptions for counsel, who enter courthouses. This bill goes well beyond what, in our view, is required to have a reasonable assurance of safety in the courts. This bill would permit police to demand identification. It would permit police to demand an explanation why somebody wants to go into a courthouse and permits

even a search of a vehicle, which is a particularly unusual provision, in my submission. Very few courthouses in this province even have parking onsite, but the bill seems to permit that, even if you parked three blocks away on the side of the street, you might have to submit your car to a search in order to enter a courthouse.

I think that the best indication of what's appropriate is shown by the practice in this province. The vast majority of courthouses, I should say, don't have any security screening, none whatsoever. There are certainly ones that do, and that can be quite justified, but practice has shown that a simple airport-style security screen to ensure that nobody enters armed with weapons or dangerous objects is more than sufficient.

There are, of course, in cases of particular dangers, still police powers that can be exercised within a courthouse. The police have the power to question people and, when they have appropriate grounds, to detain them and even to search them when there are specific, individualized grounds. Our concern is that this bill would tend to make entering a courthouse a pretext for a groundless, generalized criminal investigation of everybody who comes in the door, and we say that's too broad.

Our third problem—and I don't know if this is one that has been identified by the other parties, so I hope I can add something in this respect. The bill seems to permit courthouse security to pick individuals out at random, so not just individuals who happen to be entering a courthouse, but it seems to permit not only those who are entering or attempting to enter, but also those who are on such a premises. This would seem to allow security or the police to individually select people with no grounds and subject them to arbitrary scrutiny, questioning, identification and a search of their person and their vehicle.

There are two very pressing problems that we say exist with respect to that power. The first one is discrimination. It seems almost unavoidable that one will be met with claims of discrimination when you select people for special scrutiny with no objective reasons for it. Ultimately, those selected will be picked because somebody doesn't like the look of them. And we know that that can often be, or be viewed as being, a proxy for race, a person's manner of dress or appearance, or their associations. We know that there are members of the community who already feel targeted by the police. The last place that they should feel that they're subject to completely arbitrary search and questioning is a courthouse.

The second concern is a related one, and that relates to concerns that there could be or could be an appearance that these powers are being used in a retaliatory manner. One can imagine a defence lawyer who gives a police officer a particularly hard time in court. One can imagine a witness who has come to court to testify about abuse that he or she may have suffered at the hands of the police. One can imagine even a witness who comes to testify in support of a notorious and disliked accused person. We can imagine those individuals also being subject to arbitrary, random, groundless questioning and search.

On behalf of the CLA, we would urge you to consider redrafting this bill to authorize security searches of persons and effects for everyone entering a courthouse for security purposes with an exemption for counsel upon presenting proper identification. That, in our view, would grant police officers the necessary powers to prevent the real problems that can exist in terms of maintaining courthouse security but would not overreach.

The Chair (Mrs. Laura Albanese): Thank you for your presentation. It's the government's turn to start the questioning.

Ms. Soo Wong: Thank you very much for coming to the hearing. I just want to get some clarification, and I just want to make sure I heard what you just said. Did I hear you correctly saying that you would like to amend the proposed legislation to state that everybody will be searched except for counsel?

Mr. Howard Krongold: Yes. I mean, there may be another way to phrase that. There may be other justice system participants who can be pre-screened by security who might be appropriate, for example, clerks, perhaps jurors, certainly judges, crown attorneys whom one would not expect would need to be subjected to a security screen. Our concern here is that there should be an exemption recognized in law so that counsel who can present appropriate identification aren't routinely searched by court security.

Ms. Soo Wong: So if every individual going to court will be searched, which you suggested, would that delay entrance to the courtroom? I'm just visualizing—

Mr. Howard Krongold: If everybody is searched?

Ms. Soo Wong: Yes.

Mr. Howard Krongold: Absolutely, and I think it does. I should say this: From my understanding, and I did begin my practice in Toronto, every court in the GTA does security searches of everybody who enters, and there can be quite long lineups. As far as I'm aware, every one also exempts counsel from those security measures.

Ms. Soo Wong: So if that's what you're suggesting, does your organization have any problem asking for identification?

Mr. Howard Krongold: I think that what should be aimed for is the least intrusive measures that will still accomplish the goal of courthouse security. I think our concern is that, for one thing, there are certainly members of the community who may well feel uncomfortable just because they want to go to court that their identification is being checked, that they're being kept track of by the police. It seems, I would submit, an unnecessary step, given that we're already assuring that nobody who enters a courthouse has a weapon on them.

I'll say this as well. I noticed, for example, when I came into this building today that there is identification taken. I know that the same thing occurs in the Senate of Canada; I'm sure it's the same in the House of Commons. One of the differences, I think, is this: A courthouse is a busy location. It's not like a Legislative Assembly, where people often—

Mr. John Yakabuski: Where we do nothing.

Mr. Howard Krongold: Well, no, no. I didn't have a chance to wander the halls here, but I have a feeling—

Mr. Shafiq Qaadri: Get elected and see.

Mr. Howard Krongold: This is a hot bench, as we would say.

It seems to me that there are areas throughout this building where one can imagine you could wander and you may find yourself alone in a hallway with somebody you've never seen before, and there may be some justification for having identification taken at a place like this. Courthouses are busy, secure locations. It seems to me that people should be able to come and go as they please and that there doesn't seem to be any pressing need for taking identification from people coming into the courthouse.

Ms. Soo Wong: My last question, Madam Chair—

The Chair (Mrs. Laura Albanese): Sorry, the time is up, and I have to continue. Please proceed.

Mr. Jack MacLaren: I'm very pleased to see that you're concerned that the law goes too far with regard to identification, information, vehicle searches etc., because it's a terrible thing to see our liberties and freedoms taken away from us, and too much policing can do that.

Do you think we need this legislation at all to provide the required security in courtrooms?

Mr. Howard Krongold: Well, I guess there are a couple of aspects to that. I suppose one could ask whether legally it's required, whether the police might have the authority to set up this sort of basic security screen on their own without the legislation. It seems that that may be possible, although, that said, it's always preferable to have specific legislation to ensure that this kind of discussion takes place, where appropriate limits are put on police powers in the context of doing courthouse security searches.

In terms of whether searches are necessary at all, I think that probably varies. As I indicated, almost everywhere in the province there is no security screening done at any courthouses. That's quite a different situation in the GTA, and that's because of some very tragic circumstances that arose some time ago.

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Mr. Jack MacLaren: But if we agree that not having weapons in a courtroom is a most desirable objective, could that be done without legislation?

Mr. Howard Krongold: That's a legal question that I'd be hesitant to give a firm opinion on—

Mr. Jack MacLaren: That's your job.

Mr. Howard Krongold: It seems that it may well be that police have common law powers to set up searches where it's justified, provided that they're narrowly tailored. Again, though, I think there is real value in having the Legislature address the issue directly and set appropriate limits on it. One of the difficulties of common law powers is that very often no one knows what they are until they become tested. That's an unsatisfactory way of dealing with things, and it doesn't permit the Legislature to speak on what the appropriate contours of those powers are. So it may be that the police have powers, but I would suggest that it's preferable to deal with it in carefully tailored legislation.

The Chair (Mrs. Laura Albanese): Twenty seconds.

Mr. Jack MacLaren: Is it not true that the Criminal Code provides for some protection and would give police authority to intervene where there was risk observed or with people behaving in a peculiar fashion, or whatever words you might want to use?

Mr. Howard Krongold: If there are individualized grounds, there are a variety of police powers—sort of a spectrum of police powers—to stop people, to question them and, ultimately, to search them. But those have to be specifically tailored to those individuals. It's sort of a sliding scale of objective verification of a police officer's suspicion.

For example, if somebody is in a courthouse and there's reason to believe that they're armed, there's reason to believe that they have a weapon, it may well be that there's some ability to intervene then, but it's a different kind of power. It would be a common law power—

The Chair (Mrs. Laura Albanese): Thank you.

Mr. Howard Krongold: —to justify a complete search. I'm sorry.

The Chair (Mrs. Laura Albanese): No problem. The NDP.

Mr. Jagmeet Singh: Thank you very much for attending. My name is Jagmeet Singh. It's a pleasure to see you here. I'm going to just hand you a copy of the bill so you can follow along.

Mr. Howard Krongold: Yes.

Mr. Jagmeet Singh: Do you have a copy?

Mr. Howard Krongold: I do have a copy, yes.

Mr. Jagmeet Singh: So, what I'm going to suggest to you, based on your comments, would you agree with me that you take issue with schedule 2, paragraph 138(1)1, the requirement to produce identification and the requirement to provide information, but you don't take issue with a search of the person and the person's body itself while entering the courthouse?

Mr. Howard Krongold: I guess if I was looking at the bill directly, with respect to number 2 on that list, I think our concern would be—we would agree that there should be a power to search without warrant a person who is entering or attempting to enter premises where court proceedings are conducted. We would suggest that the last words, "or who is on such premises," creates concerns that it could be used for arbitrary, individualized searches, which we say is unjustified. Subparagraph ii, searching vehicles, we're certainly against; and subparagraph iii, "any other property in the custody or care of the person," I think it's inherent, in doing a search of a person, you have to search their personal property. If they're bringing in a bag obviously, one needs to ensure that there are no weapons in there as well.

Mr. Jagmeet Singh: Certainly, and then just addressing subparagraphs i and ii of paragraph 138(1)1—both of

those you take issue with, as well, as a member of the CLA?

Mr. Howard Krongold: Well, like I say, my concern is that the closing words of subparagraph i , "or who is on such premises," is—

Mr. Jagmeet Singh: Sorry, specifically, the "produce identification" issue, and the "provide information" issue?

Mr. Howard Krongold: Absolutely.

Mr. Jagmeet Singh: Okay. So if those were removed, if the requirement of producing identification was removed, if the requirement of providing information was removed, and the warrantless search powers of a vehicle in which you were a passenger—if they were removed and it was simply the power to search a person entering or his or her belongings, that would seem something that's reasonable to you. Do you agree?

Mr. Howard Krongold: Yes. And again, we say there should be an exemption for counsel.

Mr. Jagmeet Singh: With an exemption for counsel.

Mr. Howard Krongold: Justice system participants—there's different kinds of wording for that.

The Chair (Mrs. Laura Albanese): I believe we're—10 seconds.

Mr. Jagmeet Singh: Your position with respect to an accommodation for religious articles of faith—kirpans, turbans, hijabs?

Mr. Howard Krongold: Yes, we think that a moderate approach should be taken and that any items that don't present a substantial security risk should be permitted and, obviously, religious freedom should be respected.

Mr. Jagmeet Singh: Okay, thank you.

The Chair (Mrs. Laura Albanese): Thank you very much for your presentation.

Mr. Howard Krongold: Thank you very much, Madam Chair.

ONTARIO ASSOCIATION OF CHIEFS OF POLICE

The Chair (Mrs. Laura Albanese): The next deputant is the Ontario Association of Chiefs of Police. We call them to come forward. Good afternoon and thank you for appearing before our committee.

Mr. Jason Fraser: Good afternoon.

The Chair (Mrs. Laura Albanese): I would ask that you kindly state your name fully, for the purposes of Hansard. You will have up to 10 minutes for your presentation, which will be followed by 10 minutes of questioning by all parties. You may begin at any time.

Mr. Jason Fraser: Thank you very much, Madam Chair. My name is Jason Fraser, F-R-A-S-E-R. It was spelled with an "I" on my original tag this afternoon, hence the spelling.

Mr. John Yakabuski: F-R-A—

Mr. John Fraser: F-R-A-S-E-R, yes. Not the Blue Jays pitcher. It turns out there are other spellings.

I'm here today on behalf of the Ontario Association of Chiefs of Police. I'm a member of the Ontario Association of Chiefs of Police legal advisors committee, and I'm joined by the vice-chair of that committee, Gary Melanson. We're here on behalf of Chief Matthew Torigian, who's the president of our organization.

The Chair (Mrs. Laura Albanese): You may begin at any time.

Mr. Jason Fraser: Thank you.

The OACP participated in the review of the Public Works Protection Act that was held by the Honourable Mr. Roy McMurtry. We also participated in the Ministry of Community Safety and Correctional Services focused consultations. The OACP has publicly supported Mr. McMurtry's review and his final report. In particular, we endorse the recommendation concerning specific court security legislation in Ontario upon the repeal of the PWPA. We appreciate this opportunity today to discuss Bill 34 from the particular standpoint of court security and public safety.

Under the Police Services Act, the police are responsible for providing court security in Ontario. Pursuant to the act, they ensure the security of judges and all other justice participants. They ensure the security of court premises whenever the courts are in session. They're responsible for people in custody and when they're taken into custody at court. And they're responsible for determining the appropriate levels of security.

Unlike other jurisdictions in Canada, Ontario currently does not have a specific court security act or court security legislation, so court security officers here have been relying upon the powers of the Public Works Protection Act to require persons entering or attempting to enter a courthouse, or an approach to the courthouse, to identify themselves and state their purpose; and to search without warrant anyone or any vehicle entering or attempting to enter the courthouse or court property. The act also allowed the refusing of permission to any person to enter the courthouse, if necessary, or to use force to prevent their entry.

Ontario's Court of Appeal, as you may be aware, has acknowledged that, unfortunately, courthouses have been the scene of serious weapons-related violence. Family, civil and criminal court proceedings are all emotionally intense. We all, as a community in this province, pride ourselves on having an open and transparent justice system. At the same time, the public expects the government to take steps to ensure that their safety is maintained while they're attending a court facility.

The courts in Ontario have noted that the only effective way to diminish the risk in a large courthouse is to subject everyone without prior security clearance to some kind of inspection. This isn't to say that Public Works Protection Act powers are being routinely applied at all times and in every courthouse. Like many other policing responsibilities, police services across this province routinely tailor their court security to meet the needs of their particular courthouses and their particular communities.

The OACP supports Bill 34 and its proposed amendments to the Police Services Act. I should note that Bill 34 does not add any new powers for court security. These powers have already been available under the Public Works Protection Act. What it does allow is for the police to move forward, to stop having to rely upon the broad and blunt PWPA, and instead have court-security-specific legislation.

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As we see it, there are two overarching benefits to this. First of all, it allows for the tailoring of the powers to be specific to the needs of court security. It also provides clarity—clarity for the police in terms of them engaging in their duties and clarity for the public, and it's certainly that clarity that's lacking in the current PWPA.

In support of Bill 34, we do have five recommendations that we hope will assist in enhancing these overarching benefits.

First, we would suggest that section 138 should be amended to prescribe court security powers to police officers, a duly appointed special constable or a person who is authorized by the board or the commissioner, for example, private security. What we're saying is that there shouldn't be a need to specifically prescribe court security powers to police officers or special constables.

Court security is already part of a police officer's general duties and powers, so it's somewhat redundant to then give them those powers again, and that's essentially the same for special constables. They will already have been appointed by the police services board as court security officers under section 53(3) of the Police Services Act. The act then, with this amendment, would still contemplate having the board prescribe specifically those powers to other persons, persons that aren't either police officers or already special constables.

Our second recommendation is that subparagraph ii of 138(1)2 should be amended to clarify that vehicles entering onto courthouse property may be searched. We recognize that this power realistically is only going to apply to stand-alone courthouses that have actual court property. It's simply not going to work for court sessions that are held, as we all know, across this province either in mixed-use government offices or, in some cases, in rental units and legion halls. The Bill 34 provision essentially permits court security, if it's enacted, to extend the security checkpoint from the front door of the courthouse to, say, the courthouse driveway, in the appropriate circumstances, meaning the vehicles entering onto courthouse property may be searched as they enter, and the recourse for people who refuse to have that vehicle searched is for that vehicle to be turned away, which essentially is much the same for an individual attending at the courtroom door refusing to be screened at the courthouse and they in turn being turned away. We would suggest that this change would clarify this section, and any clarification is going to be of benefit to both the police and the public.

Out third recommendation is that subsection 138(1)3 regarding the search of persons in custody should be a stand-alone provision and not in amongst all of the other powers, and should be limited to police officers and special constables only. We would suggest that currently, as it's worded, the section allows a police services board to designate non-members of the police service to handle the searching of prisoners and the handling of prisoners. We would suggest that this power should not be delegated to non-police personnel; for example, to private security. Practically speaking, only police officers and special constables employed by the police services board or the commissioner will have access to the appropriate training.

On a technical note, we would suggest that this section be amended so that it applies to persons who "will be transported" as opposed to applying, as it currently reads, to a person who "is being transported." It's a small grammatical error, but we would suggest it makes the difference between searching people before they get on the vehicle for transport, as opposed to the way it reads now, where it seems to say that they would be searched while the vehicle is in transport.

Our fourth recommendation is that the OACP believes that signage should be posted at all premises where court proceedings are conducted to notify the public that they may be identified and searched prior to being granted entry. Additional public notice, through media releases or other forms of advertisements, may also be required for locations that are temporarily being used as court facilities. Greater awareness of court security powers will only serve to increase their effectiveness.

Our last recommendation is that secondary screening should be explicitly permitted within the courthouse. Currently, the proposed legislation provides the tools for maintaining a single layer of perimeter security, but the law doesn't clearly contemplate searching a person who is already inside the courthouse, and that type of search may be necessary; for example, if we have a person who has entered a courthouse without going through the checkpoint—entered through the side door or entered from some other part of the building in a mixed-use building—or in circumstances where a particular court proceeding requires that an additional layer of security be in place, such as trials involving organized crime or alleged acts of terrorism. And of course, as subsection 141 confirms, court security powers will always be subject to the overriding power of the judge to control the proceedings.

In conclusion, and subject to our recommendations, the Ontario Association of Chiefs of Police supports Bill 34. We support going forward with legislation that will be specific to court security and will provide the tools to keep the courthouses and our communities safe. We support legislation that will provide clarity, so that the police and the community will know what's to be expected and what to expect in terms of court security.

As I've already indicated, the current PWPA powers are not routinely applied at all times and in every courthouse. In fact, in most courthouses around the province you can enter the courthouse, conduct your business and

not even notice that there's court security. But at other times and in other circumstances, and in larger courthouses, as the Court of Appeal has recognized, the need for court safety and security will require that people be appropriately screened before entering the courthouse.

The Chair (Mrs. Laura Albanese): Thank you. The time has basically expired, but if you have a small conclusion, please go ahead.

Mr. Jason Fraser: Just my last point is that the police and court security officers in this province have been doing a commendable job of balancing the need for an open and public court and the need to keep courthouses safe and secure. That will continue if and when Bill 34 is enacted. Thank you very much, Madam Chair.

The Chair (Mrs. Laura Albanese): Thank you very much. Mr. Yakabuski.

Mr. John Yakabuski: Thank you, gentlemen, for joining us today. I want one bit of clarification here on your recommendations when you talk about subsection 138(1)3, regarding the search of a person in custody, and wanting it to be a stand-alone provision. I'm not aware of situations where a person is in custody of a private security provider. If someone is in custody, would they not be in the custody of the police?

Mr. Jason Fraser: Yes, exactly. This may just be the way, grammatically, this statute has been drafted, but right now, as it speaks, a police services board could hire private security to—

Mr. John Yakabuski: Are you aware of any police services board that has hired private security to deal with people in custody?

Mr. Jason Fraser: Not yet, and certainly I'm not aware of, currently, there being any lawful provision to do that. What we're suggesting is, we don't want that lawful provision added. It's a job that should be performed by the police.

Mr. John Yakabuski: Right, but I just didn't want there to be a misinterpretation of the current situation, and that was a concern that I had with where we may be preventing something that is not actually—or trying to stop something that actually is not happening.

Mr. Jason Fraser: True, but all that I'm saying is that the new act allows that, and we're suggesting, always in the interest of clarity of legislation, that the new act should make it clear that private security does not have a function—

Mr. John Yakabuski: Did the old act allow for it?

Mr. Jason Fraser: It doesn't speak to it at all. This act does.

Mr. John Yakabuski: Okay, I just want to clarify that we don't have a history of that. I don't expect police services boards to be going down that road. I think they recognize the importance of having trained personnel in dealing with persons in custody. I just wanted to clarify that.

The other thing I just wanted to ask—

The Chair (Mrs. Laura Albanese): One minute left.

Mr. John Yakabuski: The deputy commissioner of the OPP, when he was in here—I don't see anything where you folks have addressed it, and we've had a number of submissions today with respect to giving an exemption to the wearing of a kirpan. The OPP had some concerns with it as being—it is an article of religious faith, but it could be used by someone else if they were able to get access to it. Do you have a position on it, as an association of chiefs of police?

Mr. Jason Fraser: Well, I do know the association right now is working with the Human Rights Commission and working with interested parties essentially to address that issue and formulate the appropriate policy so that we draw the proper balance between religious accommodation and respect for religions and cultures and the need for providing court security. I would suggest that any legislation is going to be followed by our police services in a manner that's consistent with the charter and consistent with the Human Rights Code.

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The Chair (Mrs. Laura Albanese): Thank you very much.

Mr. John Yakabuski: Thank you very much.

The Chair (Mrs. Laura Albanese): It's the turn of MPP Singh.

Mr. Jagmeet Singh: Thank you very much. That was a very good answer. Thank you for that.

Just building on some of the issues that have arisen, would you agree with me, sir, that the current practice in courthouses that do have security is that there is a wanding or a metal detector and then an airport-style screening of the bags?

Mr. Jason Fraser: There doesn't seem to be a consistent practice. I can say that for courthouses in the GTA—York, Durham, Toronto—that tends to be the practice on most days, but that practice may change depending on specific circumstances. For example, I know in Toronto when they were dealing with a trial involving organized crime, and in Brampton when they were dealing with a trial involving alleged terrorism, that the security that was required was altered and was increased. So it didn't follow that norm. But I would agree, at least in the GTA, that's sort of the norm on a daily basis. But outside the GTA, I would suggest that the security may be nothing more than having somebody wandering around the halls.

Mr. Jagmeet Singh: That was my next question. So in the GTA, what I have described with the wanding, the metal detector and the airport-style baggage screening is the norm. Outside of the GTA, in many courts throughout Ontario there is absolutely no security searching. Would you agree with me?

Mr. Jason Fraser: Well, I know Waterloo is adopting that—they have a newer courthouse now, so they are adopting a similar strategy as the GTA. For other courthouses, I've seen where that's not necessarily the norm but where that has been employed on a case-by-case basis, depending on the needs of the day.

Mr. Jagmeet Singh: Certainly. But you would agree with me that there are many courts where there's no searching at all?

Mr. Jason Fraser: Absolutely.

Mr. Jagmeet Singh: And certainly there's absolutely no court that regularly requires identification to be presented.

Mr. Jason Fraser: No, and I don't believe we're suggesting that identification should be regularly provided. Under Public Works it's always been there as a power, just like there have been many powers that have always been there as powers. One of the greatest issues is, how do you balance that power with the need for an open court? I think the answer goes along the same lines as why there isn't anybody wanding anyone in the court in, say, Stratford. Security is assessed on a courthouse-by-courthouse basis.

Mr. Jagmeet Singh: And you'd also agree with me that there's no one asking any reasons before someone is allowed to enter a court in any of the courthouses in Ontario?

Mr. Jason Fraser: Again, I know it has happened, depending on the circumstances, but it's not something that would happen as a matter of course.

Mr. Jagmeet Singh: And in terms of security in courthouses, there are a number of court security officers as well as police officers who are regularly walking around the hallways in most courthouses?

Mr. Jason Fraser: There are, but unfortunately at the same time there do continue to be acts of violence perpetrated in courthouses.

The Chair (Mrs. Laura Albanese): Thank you.

Mr. Jason Fraser: Actually—

The Chair (Mrs. Laura Albanese): No, sorry. Finish your thought.

Mr. Jason Fraser: As my friend has pointed out, some don't. In my own personal experience, I have been in a courthouse where 911 had to be called because there were no police officers there.

Mr. Jagmeet Singh: Certainly.

The Chair (Mrs. Laura Albanese): And now we'll go to the government side. Ms. Wong.

Ms. Soo Wong: Thank you, Madam Chair.

I just have a couple of quick questions for you. Thank you for being here today. With regard to your recommendation on the bottom of page 2, you talked about subsection 138(1)3, that that section should be stand-alone. Do you believe, in your opinion, if this section is stand-alone, it will strengthen the bill?

Mr. Jason Fraser: That's dealing with searching prisoners?

Ms. Soo Wong: Yes.

Mr. Jason Fraser: I certainly believe that it will strengthen the bill by ensuring that prisoner handling and searches are conducted by police professionals, by police officers and duly designated court security officers.

Ms. Soo Wong: My next question here is, there have been a lot of comments made today dealing with section 138(1), dealing with identification. In your organization, do you see any issues or concerns if we ask for identification?

Mr. Jason Fraser: Again, it's going to be specific to the circumstances. As I've already indicated, that's a power that's available now, but it's certainly not a power that's regularly used. But in the appropriate circumstances, it certainly is a tool that can enhance the security of courthouses.

Ms. Soo Wong: My last question to you, sir, is, do you have any issues with regard to the accommodation issues that have been spoken to earlier by previous deputants—any kind of accommodation, whether it's religious or physical disability?

Mr. Jason Fraser: I would suggest that accommodation is required in all pieces of legislation that empower the police. As it's currently written right now, accommodation will form part of Bill 34 because all of our members have to abide by and support and address the Human Rights Code and the Charter of Rights and Freedoms.

Ms. Soo Wong: Thank you.

The Chair (Mrs. Laura Albanese): Thank you very much. Any more questions? No.

Thank you for appearing before our committee this afternoon.

Mr. Jason Fraser: Thank you, ma'am, and thank you to the members of the committee.

Mr. Gary Melanson: Thank you.

COUNTY AND DISTRICT LAW PRESIDENTS' ASSOCIATION

The Chair (Mrs. Laura Albanese): We now call on the County and District Law Presidents' Association to come forward. As you've heard all afternoon, please clearly state your name for the purposes of Hansard. You will have up to 10 minutes for your presentation, and that will be followed by 10 minutes of questioning by all parties.

Mr. Robert Zochodne: Thank you very much. My name is Robert Zochodne, and I'm the past chair of the County and District Law Presidents' Association. Like most, we have an acronym: It's CDLPA.

By way of explanation, every county has a local law association. Those are voluntary associations of local lawyers. They deal with matters of local concern and obviously manage local law libraries within every county courthouse in Ontario.

CDLPA is an umbrella organization that speaks on behalf of those 46 law associations outside of Toronto. We also have a formal affiliation with the Toronto Lawyers Association. The members of our association are practising lawyers across Ontario.

Our members work every day in local courthouses. They volunteer their time sitting on local chambers of commerce, hospital boards, charities, even police services boards. Our members devote many hours to justice issues at the local level. They serve on bench and bar committees, local court security committees. We work with local judges, court officials and users of our courthouse.

At the provincial level, we at CDLPA have had a lot to say about court security. We've given input regarding public policy issues regarding court security. Most recently, the Ministry of the Attorney General asked us to comment on some court security standards consultations in 2011. We, with regard to that, responded quite positively to the creation of local court security committees in every county in Ontario.

We take the issue very seriously and we appreciate the hard work that local court security committees do and the difficult job that police services boards have in maintaining a level of court security in our courthouses. Court security, as you've heard, obviously is important to lawyers. Far too often, lawyers have been the subject of courthouse violence. Courthouses are lawyers' workplaces as well as many others.

You've heard from other groups today and otherwise regarding the wider implications of Bill 34. I'm here only to address the one, discrete issue in that regard, and that relates to the search powers for lawyers entering courthouses. We're seeking specifically only to have section 138(1) exclude lawyers from part 2 of the search provisions, provided that a lawyer entering the courthouse presents a valid law society identification card—the law society, of course, being the governing body for all lawyers. That is, I would submit, the status quo in many courthouses in Ontario. What we're just seeking to do is ensure that this legislation doesn't disturb what we see to be the status quo.

The reasoning for that is really simple, and you've already heard a lot of this, so I won't waste your time on that. But really, it comes down to three basic principles.

First, you've heard about solicitor-client privilege. This is, obviously, one of the law's oldest principles and requires us as lawyers to treat the information we have from our clients as confidential. Generally, we can't be required to divulge that. So we take this position not out of self-interest but in order to protect the information of our clients when we enter courthouses.

Second of all, our rules of professional conduct as lawyers require that we have a duty to the administration of justice generally, and if a lawyer breaches that, obviously, there could be serious discipline consequences. So we take that obligation to the administration of justice very seriously.

Thirdly, and you've heard this as well, we're officers of the court. We're not just participants in the court, but we're actually officers of the court. It is one of our canons of ethics that if we're aware of any breach of court security, it is our obligation to bring that to the attention of the powers that be.

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Just a brief comment about the Oshawa courthouse: My law firm has an office in Oshawa. I was born and raised there. It's our newest courthouse at the moment, although not for long. It was completed a couple of years ago. It's a state-of-the-art facility and it's just about literally in my backyard.

You may know that the issue of court security was the subject of some litigation when that courthouse was opened two years ago. It arose from the expressed intention of the Durham Regional Police Service to search some lawyers upon entering that courthouse. It was my privilege to have acted on behalf of the applicant in that litigation, and I was even more pleased that the parties to that litigation were able to settle their differences. The differences were settled essentially on the basis that lawyers who now enter the Oshawa court facility are not subjected to a security search provided that they show a valid law society identification card. It's that solution, as we see it, between members of the justice system that ought to be a guide for your deliberations regarding the issue that I'm here addressing before you. Simply put, our position is that that solution should be incorporated in the legislation, exempting lawyers from the search provisions of the proposed section 138 as long as we have a valid card.

I thank you for the opportunity to be here, and we'll be happy to answer any questions.

The Chair (Mrs. Laura Albanese): Thank you. This round of questioning will be started by the NDP.

Mr. Jagmeet Singh: Just to touch very briefly on your first point with regard to the exception for lawyers: As far as you understand, that exemption for lawyers in terms of not being searched is an informal practice which exists across Ontario, it's currently ongoing and it's been ongoing for years where lawyers are exempt from that search?

Mr. Robert Zochodne: Yes.

Mr. Jagmeet Singh: As far as you know, there has been no incidence of any concern arising from giving lawyers that exemption.

Mr. Robert Zochodne: No. In fact, I'd go further and say that I'm not aware of any incident involving lawyers being the ones who may be a cause of a court security breach. Quite the contrary.

Mr. Jagmeet Singh: In respect of the exemption, some of the rationale for that is—would you agree with me?—the proper functioning of a courthouse, the efficient functioning of a courthouse, as lawyers are the vehicles through which court procedures continue. Would you agree with that assessment?

Mr. Robert Zochodne: Yes, I'd agree that lawyers, being officers of the court, are certainly part of the justice system and recognized in the eyes of the law. Most definitely.

Mr. Jagmeet Singh: With respect to some of the details of the provisions of the bill, have you had an opportunity to review some of the provisions under subsections 138(1) and (2)?

Mr. Robert Zochodne: Yes.

Mr. Jagmeet Singh: I'm going to raise some concerns with respect to the power that requires—currently, as security works, you agree with me that some jurisdictions have a searching protocol which involves wanding or a metal detector, similar to an airport security system searching of baggage. Is that correct, as far as you know?

Mr. Robert Zochodne: I believe so, yes.

Mr. Jagmeet Singh: Currently, there's no regular procedure which involves identification or requiring any information in order to enter the courthouse.

Mr. Robert Zochodne: I think that's right.

Mr. Jagmeet Singh: Do you have any concerns with the requirement to have to produce identification on the part of anyone entering the courthouse?

Mr. Robert Zochodne: We're not taking a position on that as an organization.

Mr. Jagmeet Singh: Fair enough. With respect to the search without warrant, are you taking any position on the powers of search without warrant with respect to vehicles?

Mr. Robert Zochodne: No, we've left that to other lawyer groups to deal with.

Mr. Jagmeet Singh: Fair enough. With respect to the requirement that a member of the law society present identification to identify themselves as a member of the law society, there's obviously no issue with that.

Mr. Robert Zochodne: No.

Mr. Jagmeet Singh: By providing that identification, having the benefit of that and being exempt from the search and exempt from any lineups.

Mr. Robert Zochodne: Quite so, yes.

Mr. Jagmeet Singh: Okay. No further questions.

The Chair (Mrs. Laura Albanese): Thank you. We'll go to the government side.

Ms. Soo Wong: I have a couple of quick questions for you. Thank you for being here.

Does your organization support the proposed Bill 34?

Mr. Robert Zochodne: We're only here to speak to the one discrete issue; that's it.

Ms. Soo Wong: This issue. That's all?

Mr. Robert Zochodne: Yes.

Ms. Soo Wong: And you have no opinion with respect to the identification that has been outlined in section 138?

Mr. Robert Zochodne: We're not taking a position on that. We've left it to the other lawyer groups to do so.

Ms. Soo Wong: So the only thing you're requesting is the exemption dealing with your colleagues and yourself with regard to entrance to the courthouse.

Mr. Robert Zochodne: Yes.

Ms. Soo Wong: Thank you. That's all I wanted to know.

The Chair (Mrs. Laura Albanese): Any further questions from the government side? Then we'll proceed to—

Mr. Lorenzo Berardinetti: Sorry, Madam Chair.

The Chair (Mrs. Laura Albanese): Yes.

Mr. Lorenzo Berardinetti: I do have a quick question. Thanks for coming out today. I still practise law but—well, I still have my law society form. When I was practising law in Scarborough, there was a metal detector, and everyone was forced to go through it. I showed my law society card, and everyone had to go through it, regardless of who you were, because of the high security requirements at the courthouse in Scarborough. You're asking for an exemption to that?

Mr. Robert Zochodne: Yes.

Mr. Lorenzo Berardinetti: Right. So how do you deal with a situation where you've got a courtroom with heavy security? This has been requested by the crown attorneys as well as the judges.

Mr. Robert Zochodne: One of the issues on court security is jurisdiction. This proposed legislation specifically recognizes that judges can make orders regarding court security. Judges will always make court security orders that will deal with that—

Mr. Lorenzo Berardinetti: But as far as I know, there has been no order made.

Mr. Robert Zochodne: Pardon me?

Mr. Lorenzo Berardinetti: As far as I know, there has no order been made.

Mr. Robert Zochodne: Right, but for specific courtrooms, judges have been known to make certain orders regarding the security of their courtroom and the entrances to it.

Mr. Lorenzo Berardinetti: The problem is the entrance into the building itself.

Mr. Robert Zochodne: Even in Durham, when I enter the Durham courthouse, I walk through a magnetometer or whatever you call that big airport-style security. I'm assuming it's off, but I don't know what would happen if a light went off and a bell rang. But certainly, as far as I'm aware, it's not activated.

Mr. Lorenzo Berardinetti: Okay, thank you.

The Chair (Mrs. Laura Albanese): Thank you. We'll pass on to the Conservatives.

Mr. John Yakabuski: I appreciate you coming in today. I have a similar concern. Currently, it's not the practice that lawyers are asked for ID or searched. We have a detector as we go into our chamber. We routinely are not asked to go through the detector as members of the Legislature, but there's nothing in writing. There's no law. There's no bill. There's no rule that says that MPPs don't have to be checked.

My concern would be that if we granted this particular exemption, then that's an edict. That's an absolute. Then the security people no longer have the option. We're all human beings. We're all subject to having things go sideways, just like any one of us or anybody else. If you give that absolute exemption that lawyers no longer are subject to the rules, it would, in my opinion, take away the ability of security—for example, maybe somebody has heard that, "Do you know what? Joe is going a little AWOL here. I think there are some real problems here in his life. Some strange things have been going on outside of his legal life. We're not really sure whether he's rational anymore. Oh, but Joe can't be asked for ID, or Joe can't be searched, or Joe can't be requested under certain circumstances—he's got the get-out-of-jail-free pass."

I have some real concerns that we just automatically say that just because you belong to the society, we can't check you anymore. I don't know how big of an infringement it could possibly be to your members. If the practice is that, for all practical purposes, you don't get

checked, why do you need this card that says, "I'm so special you can't check me"?

Mr. Robert Zochodne: From our point of view, if the legislation was passed without a recognition of that, it might well result in a change in what we consider to be the status quo. It would simply incorporate what the status quo is.

Mr. John Yakabuski: So our clogged-up courts would just clog up more, then.

Mr. Robert Zochodne: The harm is that, in our view, it abrogates a fundamental privilege that clients have that the information that we're bringing into the courthouse is privileged, and it ought not to be searched by the state. That's essentially the position—

Mr. John Yakabuski: We all have the presumption of innocence. We all have to be subject to reasonable controls.

Mr. Robert Zochodne: Quite so, but from our perspective, it's not out of the self-interest of lawyers not being searched; the position we're taking relates—

Mr. John Yakabuski: You've lived without it since 1939.

Mr. Robert Zochodne: Without?

Mr. John Yakabuski: The card, the special pass.

Mr. Robert Zochodne: Well, but there's been a practice. Our concern is that this legislation, without dealing with it, might well be interpreted otherwise going forward.

Mr. John Yakabuski: There are a million things not addressed in this legislation. There are only a few things that are addressed. Is the rest of the world at threat too because it's not addressed in this legislation? I really actually have a problem with this request, to be honest with you.

Mr. Robert Zochodne: I understand the point. From our perspective as officers of the court, it's no different than a member of the judiciary taking the same position, that they ought not to be searched going into the courthouse, or a crown attorney, who are members of the law society as well.

Mr. John Yakabuski: We could go on, but I think we've made our point.

The Chair (Mrs. Laura Albanese): Well, we only have 20 seconds left.

Mr. John Yakabuski: Thank you very much for the submission.

Mr. Robert Zochodne: Thank you for the opportunity.

The Chair (Mrs. Laura Albanese): Thank you. Have a good afternoon.

Before we adjourn, I would like to remind the committee members that amendments to the bill need to be filed with the clerk of the committee by 5 p.m. on Tuesday, April 24.

I also would like to remind everyone that the committee meets on Thursday, April 26, for clause-by-clause consideration of the bill.

Interjection.

The Chair (Mrs. Laura Albanese): I'm reading from our subcommittee report.

It's Thursday, and we end with a note of good humour. We're adjourned.

The committee adjourned at 1611.

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STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 26 April 2012

Jeudi 26 avril 2012

The committee met at 0914 in committee room 1.

SECURITY FOR COURTS, ELECTRICITY GENERATING FACILITIES AND NUCLEAR FACILITIES ACT, 2012

LOI DE 2012 SUR LA SÉCURITÉ DES TRIBUNAUX, DES CENTRALES ÉLECTRIQUES ET DES INSTALLATIONS NUCLÉAIRES

Consideration of the following bill:

Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012 / Projet de loi 34, Loi abrogeant la Loi sur la protection des ouvrages publics, modifiant la Loi sur les services policiers en ce qui concerne la sécurité des tribunaux et édictant la Loi de 2012 sur la sécurité des centrales électriques et des installations nucléaires.

The Vice-Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, colleagues, I call this meeting to order, the Standing Committee on Justice Policy. I now welcome back our clerk, Mr. William Short.

Chers collègues, j'appelle à l'ordre cette réunion du Comité permanent de la justice du Parlement de l'Ontario.

Before we have any further business, I'd just like to acknowledge the presence of Mr. Randy Hillier, who has been duly subbed in for Mr. Rob Milligan. I'd now direct the clerk to please remedy his name tag.

Yes?

Ms. Soo Wong: He's subbing for somebody too.

Interjection.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Zimmer, for that notification. Do you have one of these slips?

Mr. David Zimmer: Yes.

The Chair (Mr. Shafiq Qaadri): Yes, it seems to be here. That's fine.

If there is no further business, I'll now invite members to please begin clause-by-clause consideration. Is that all right?

Mr. Randy Hillier: Chair?

Mr. Shafiq Qaadri: Yes, Mr. Hillier?

Mr. Randy Hillier: I move that we adjourn the Standing Committee on Justice Policy from clause-by-clause consideration of Bill 34 until this committee has deliberated on whether this legislation breaches the independence of the judiciary.

The Vice-Chair (Mr. Shafiq Qaadri): May I just confirm: "to adjourn"?

Mr. Randy Hillier: Yes, to adjourn.

The Vice-Chair (Mr. Shafiq Qaadri): We need a copy of that motion. Are there any speakers for or against before we move to the vote on adjournment of the committee? Yes, sir.

Mr. Randy Hillier: I would like to speak to it, but I think it would be proper to have the motion in front of everybody before—

Mr. David Zimmer: Are you wasting time again?

Mr. Randy Hillier: No, no. This is important deliberation.

Mr. David Zimmer: You're wasting time. Let's deal with this. They subbed me on to this committee. I worked last night to brief myself. I got all ready to work.

Mr. John Yakabuski: David is angry. We'd better capitulate here.

Mr. Randy Hillier: Should we have a motion that angry, cantankerous, old MPPs get booted off the committee?

Ms. Soo Wong: Are you speaking about you?

Mr. Randy Hillier: That's right.

The Vice-Chair (Mr. Shafiq Qaadri): If it's agreeable to the committee, instead of once again deferring our discussion till the photocopies arrive, perhaps we can begin the discussion. The floor is open. Mr. Hillier, if you'd like to begin, you're welcome.

Mr. Randy Hillier: Well, really, without having the motion in front of them, it's going to be a little bit—

The Vice-Chair (Mr. Shafiq Qaadri): Fair enough.

Mr. Randy Hillier: I would like to speak to the motion, but I would like to have the motion in front of the members so that they can see clearly and understand clearly what the discussion is about.

The Vice-Chair (Mr. Shafiq Qaadri): Certainly. Mr. Miller.

Mr. Paul Miller: Thank you, Mr. Chair. Obviously, we're not thrilled about the holdup, but we certainly understand that some of the amendments came in quite late, and the government has asked if they could further study them to analyze them better so they can make a

proper and whole decision on the way we're going. We don't have a problem with further analysis of the situation.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller.

Any speakers from the government side? We yet again await the photocopies.

Thank you, colleagues. The most recent motion presented by Mr. Hillier is now being distributed. I would now invite speakers. Once again, we're at about 28 minutes or so from the vote, and we'll adjourn at 10 minutes to or earlier for the vote. Mr. Hillier.

Mr. Randy Hillier: Thank you, Chair. This bill, Bill 34: You can clearly see what the intent and the expectations are, but I think there needs to be cause to look at how this is going to impact all people, especially in the courtrooms. I'd like to just read a little bit from the Canadian Ethical Principles for Judges, and it's on judicial independence.

0920

"Judges must exercise their judicial functions independently and free of extraneous influence....

"Judges should encourage and uphold arrangements and safeguards to maintain and enhance the institutional and operational independence of the judiciary....

"Judicial independence is not the private right of judges but the foundation of judicial impartiality and a constitutional right of all Canadians.... Judicial independence thus characterizes both a state of mind and a set of institutional and operational arrangements."

What I'm getting at here is—and I believe there are about 400 courthouses in the province, somewhere in that neighbourhood, with many different judges. Under this legislation, any judge's freedom to enter the courtroom, enter the building, is subject to search—subject to search of his private belongings, his vehicle and whatever else he may have. This clearly can't be the intention of Bill 34, but that's the way it's written at the present time. Any judge's independence of travel and movement is subject to restrictions by a security guard in a courtroom or near a courtroom. I think that just hasn't been considered.

Of course, in this legislation, in Bill 34, anybody can be identified or exempted or excluded or included at some future date by regulation. Of course, we know that that regulation—who's in and who's out—will not come back before legislators for discussion and debate. I think it's quite incumbent upon us all to make sure that Bill 34 does not create another set of circumstances like what happened with the G20 conference in Toronto, where there was poor implementation, no scrutiny of the regulation that was enacted for that G20 summit by legislators, or political oversight of any manner. It caused significant harm, not just to the government of the day; it caused significant harm to our province and our society.

I think we really need to look at how this bill may in the future impact the independence of the judiciary, and I believe we should make arrangements for this committee to actually study how it will impact the independence of the judiciary.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier.

Just to remind committee members, members have approximately up to 20 minutes to speak on this particular motion.

I'll move to the next speaker, to the NDP. Monsieur Singh.

Mr. Jagmeet Singh: Thank you very much. Just with respect to the independence of the judiciary, I wholeheartedly agree that the judiciary should maintain its independence. It's one of the key components to an effective judiciary that they maintain their independence both politically, without undue influence, and be able to maintain a thoughtful, rational approach to the application of the law.

With respect to their movements in the courthouse, I agree that there is no clear law or exemption or regulation that provides for that power for the judiciary the way the bill is crafted now. I do note that one of the motions before this committee, that moves to strike schedule 2 and substitute it with an amended version of the Manitoba security act, does include a specific regulation regarding the judicial powers. I'll just read it in just to provide an example of how we can maintain independence of the judiciary. If you have the motion in front of you, it's section 145—

Mr. Randy Hillier: I don't have the motion.

Mr. John Yakabuski: It's "Judicial powers unaffected"?

Mr. Jagmeet Singh: Yes, "Judicial powers unaffected."

Mr. Randy Hillier: Oh.

Mr. Jagmeet Singh: It says:

"No derogation

"Re judicial powers

"145(1) Nothing in this part derogates from or replaces the power of a judge or judicial officer to control court proceedings, or to have unimpeded access to premises where court proceedings are conducted."

This directly addresses the issue that my colleague raises, that the judiciary should be independent in their movement and have unimpeded access to the court proceedings or the court premises. In terms of unofficial or informal accommodation that's been occurring, it's well respected as well as common-law authority that judges do have the authority to impose their own level of security in each courthouse. That common-law power would exist regardless of Bill 34. There is a common-law authority that judges do have that discretion in their courtrooms.

But this additional piece in the Manitoba legislation which I've amended to fit into Bill 34 would clarify in legislation and would have that power crystallized so that there would be no confusion or no lack of clarity on that issue. I think that it's an important issue, and I think that this motion, the NDP motion, would address that issue sufficiently and provide for those powers so that the judiciary does remain independent and have complete access to the courthouse.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. Are there any other speakers? Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Just for the record, it was dropped to us at the last minute, and—

Interjections.

Ms. Soo Wong: I can't hear.

Mr. Lorenzo Berardinetti: This was dropped to us at the last minute, just for the record. That's why I mention that. This was just given to us at the last minute. Thank you.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. Mr. Hillier?

Mr. Randy Hillier: Yes, there was a little bit of noise, and I didn't get to hear it clearly. I would like to ask the NDP—I've got your amendments here. What specific amendment is it, so we can actually read it?

Mr. Paul Miller: Okay, we're going to look. Just hang on, Randy.

Mr. Randy Hillier: I think, Chair, this is also why I was looking to adjourn the committee from the clause-by-clause considerations until we actually have some deliberation on this matter.

The Vice-Chair (Mr. Shafiq Qaadri): I appreciate the rationale. Are we ready to vote on this particular motion?

Mr. John Yakabuski: I haven't spoken.

The Vice-Chair (Mr. Shafiq Qaadri): Mr. Yakabuski.

Mr. John Yakabuski: I've got to prove to my constituents that I was actually here this morning.

Mr. David Zimmer: I'll vouch for you.

Interjections.

Mr. John Yakabuski: Now I'm on the record, correct?

The Vice-Chair (Mr. Shafiq Qaadri): We each have our goals, Mr. Yakabuski. Please proceed.

Mr. John Yakabuski: Oh, great, great. Look, I appreciate my colleague Mr. Hillier's motion and also the input from Mr. Singh from the NDP. I apologize; I didn't hear Mr. Berardinetti because I was talking to Mr. Singh at the time.

He raises an interesting question, and I also understand and agree with Mr. Singh that if this is not defined somewhere else in law, it is the common-law principle about the supremacy of the judiciary within their own courts.

However, it is not something that was discussed or talked about in this bill, nor has it been addressed, unlike the Manitoba statute, the Court Security Act, subsection 8(1) which clearly states:

"Judicial powers unaffected

"8(1) Nothing in this act derogates from or replaces the power of a judge, master, or judicial officer to control court proceedings."

So it is defined and codified in the law in Manitoba, but it is not addressed in Bill 34. I'm not a legal expert, nor do I have to be to sit on this committee, but I do think that Mr. Hillier's motion with respect to determining whether or not this is codified somewhere else in law, that the judiciary is supreme within their own coat—within their own court—and their coats, probably, too—that they are supreme within their own court. Perhaps it would be also possibly defined in common law or set by precedent in common law, so that perhaps we should get some kind of clarification. I appreciate the motion and I think that it's a valid one.

0930

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Yakabuski, and just before opening the floor to Mr. Miller, I just want to be clear: The motion is to defer clause-by-clause consideration but to reconvene today at 2 p.m. for further consideration.

Mr. Miller?

Mr. John Yakabuski: Does it say that?

The Vice-Chair (Mr. Shafiq Qaadri): The motion presenter said.

Mr. Paul Miller: In reference to Mr. Hillier's request, the one that you were looking at, Randy, is 5.5. It's four pages. With his legal background, Mr. Singh has done a superb job on this, with the assistance of legislative counsel. I think you'll find it very informative and very good. It's 5.5, if you want to address that. And we will get copies of all our amendments to you if you don't get them, so you can further study them.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. As I understand it, all members do have copies. That was actually the original holdup.

I can see the committee would like to speak more. I just notify you that we have about six minutes or so before we will recess. If you would like to entertain the motion to vote on, I am willing to do so.

Ms. Wong.

Ms. Soo Wong: I want to get some clarification. The motion in front of us did not state the time of reconvening. I just heard you saying, Mr. Chair, that you want to reconvene this committee at 2 o'clock. Does it not mean the motion should reflect that?

The Vice-Chair (Mr. Shafiq Qaadri): That's a valid point. Mr. Hillier, would you like to clarify when you would like it—

Mr. Randy Hillier: That would be fine. If you want to re-table the motion with—

Mr. David Zimmer: Just leave it the way it is.

The Vice-Chair (Mr. Shafiq Qaadri): We have to procedurally deal with this motion. Should you need to make changes to specify whether it's today or next week, that would require not only a second motion but more photocopies.

Mr. Paul Miller: Mr. Chair?

The Vice-Chair (Mr. Shafiq Qaadri): Yes, Mr. Miller.

Mr. Paul Miller: So the motion that Mr. Hillier has presented—and Ms. Wong said that she's concerned about the 2 o'clock restart. So is this an all-day motion, or are we going to come back and do the same thing again at 2 o'clock and you're going to put another motion in? What's the status here?

The Vice-Chair (Mr. Shafiq Qaadri): My clerk spoke earlier with Mr. Hillier, and I understand we extracted the intention being of reconvening here at 2 p.m. today. Is that correct, Mr. Hillier?

Mr. Randy Hillier: Yes, that's correct.

The Vice-Chair (Mr. Shafiq Qaadri): That is the motion that we now have before us.

Mr. Paul Miller: So he will put another motion in at 2, probably? Is that what you're—

Interjection.

Mr. Paul Miller: Okay. I get the drift. I get the drift. Thank you, Chair.

The Vice-Chair (Mr. Shafiq Qaadri): Just procedurally, should you wish to adjourn, Mr. Hillier, until next week, we will need to vote on this motion. Then you'll need to amend this motion and then re-present this motion.

Mr. Randy Hillier: Say that again? You lost me there for a moment.

The Vice-Chair (Mr. Shafiq Qaadri): We need to vote on this.

Mr. Randy Hillier: Yes.

The Vice-Chair (Mr. Shafiq Qaadri): Presumably, it will not carry, for example.

Mr. Randy Hillier: Right.

The Vice-Chair (Mr. Shafiq Qaadri): Then you will need to create another motion specifying exactly when you would like to have the adjournment expire, meaning later today or next week, and then re-present it, entering interim photocopies and then voting.

Mr. Randy Hillier: Okay. Listen, why don't we take a 20-minute recess and consider that and—

Mr. David Zimmer: Let's just vote.

The Vice-Chair (Mr. Shafiq Qaadri): If that is the will of the committee, it's allowed by procedure.

Mr. Randy Hillier: Okay. Go to the vote.

Ms. Soo Wong: Mr. Chair, can I just make a comment? I came here to work this morning. I had every intention to go clause-by-clause, but at the last minute we have these submissions. I respect that. But let's not defer, have another recess and come back. We're here for a purpose, folks. I'm here for a purpose. I want to be very clear: If we're going to move a motion to adjourn, that's fine with me for today, but I want it to be absolutely clear, when I'm going to be voting on a motion, is it coming back at 2 o'clock or are we coming back next Thursday? I want it to be very clear what I'm voting for.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. While we certainly appreciate your intentions, Ms. Wong, we do have a motion before the floor that needs to be voted on before we can recess, so I would invite the committee to entertain this particular motion now.

The clarification is, because as it was presented, though not stated, it is 2 p.m. reconvening.

Mr. David Zimmer: It doesn't say that.

The Vice-Chair (Mr. Shafiq Qaadri): It does not say that.

Mr. John Yakabuski: It does not say what?

The Vice-Chair (Mr. Shafiq Qaadri): Since we seem to have gotten ourselves into a bit of a tangle, I will invite the honourable William Short to please clarify.

The Clerk of the Committee (Mr. William Short): To clarify for everybody, the motion that's on the floor right now would be, assuming it carried, to have clause-by-clause consideration delayed until the committee deliberated on whether or not the legislation breaches the independence of the judiciary. That could mean that we come back at 10 o'clock; that could mean we come back at 2 o'clock today; that could mean we come back next week.

If a member wants to move a clause to have us come back at a certain time, that would be either an amendment to this motion, or we vote on this motion and then someone would introduce a new motion saying that we come back whenever. As this motion stands right now, we would just be pushing aside clause-by-clause until another time.

Interjection.

The Clerk of the Committee (Mr. William Short): The member can withdraw the motion—no, the motion is on the floor. So we're dealing with the motion as it is right now.

The Vice-Chair (Mr. Shafiq Qaadri): Mr. Miller.

Mr. David Zimmer: Point of order—

The Vice-Chair (Mr. Shafiq Qaadri): Mr. Miller.

Mr. Paul Miller: Listen, if people want to further study this situation—because there were a lot of amendments that came in late last night, and it's only fair that people should have an opportunity to review them. But I do not want to be coming back at 2 o'clock. Either you're adjourning for the whole day or you're not, so this motion, obviously, will be defeated. If Mr. Hillier wants to put in another motion, we'll entertain it, but at this point we're dealing with that one? Thank you.

The Vice-Chair (Mr. Shafiq Qaadri): We have Mr. Zimmer, then Mr. Yakabuski, then Ms. Wong, in that order. Mr. Zimmer.

Mr. David Zimmer: I'd like to move an amendment to Mr. Hillier's motion. The amendment would add, following "judiciary," the words "the committee hearings shall be adjourned to the week"—what's the week starting Monday?

Mr. John Yakabuski: April 30.

Mr. David Zimmer: —"the week beginning April 30, 2012."

The Vice-Chair (Mr. Shafiq Qaadri): That is interpreted as a friendly amendment. Is it the will of the committee that we acknowledge that? All in favour of that particular amendment addition? All opposed? The amendment carries.

Now I would invite voting upon the original, but now amended, motion. Is that the will of the committee? All those in favour of the motion presented by Mr. Hillier, as amended? Those opposed? Motion carries.

This committee now stands adjourned till next Thursday.

The committee adjourned at 0938.

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Official Report of Debates (Hansard)

Thursday 3 May 2012

Journal des débats (Hansard)

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Standing Committee on Justice Policy

Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2012

Comité permanent de la justice

Loi de 2012 sur la sécurité des tribunaux, des centrales électriques et des installations nucléaires

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 3 May 2012

Jeudi 3 mai 2012

The committee met at 0907 in committee room 1.

SECURITY FOR COURTS, ELECTRICITY GENERATING FACILITIES AND NUCLEAR FACILITIES ACT, 2012

LOI DE 2012 SUR LA SÉCURITÉ DES TRIBUNAUX, DES CENTRALES ÉLECTRIQUES ET DES INSTALLATIONS NUCLÉAIRES

Consideration of the following bill:

Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012 / Projet de loi 34, Loi abrogeant la Loi sur la protection des ouvrages publics, modifiant la Loi sur les services policiers en ce qui concerne la sécurité des tribunaux et édictant la Loi de 2012 sur la sécurité des centrales électriques et des installations nucléaires.

The Chair (Mrs. Laura Albanese): Good morning, everyone. We're calling the Standing Committee on Justice Policy to order. Today we have the clause-by-clause consideration of Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012.

Before we proceed, all the members have on their desk a document prepared by the research officer in regard to a motion that was presented last week. Any discussion on that? Mr. Yakabuski?

Mr. John Yakabuski: Pardon me, I was reading something. I'm sorry, Madam Chair. I should be paying attention.

The Chair (Mrs. Laura Albanese): Each member has a document on their desk prepared by the research officer. It was requested by the committee last week in regard to a motion that was moved on the independence of the judiciary in the bill. So it's in front of everyone's desk. Any discussion on that? Ms. Wong?

Ms. Soo Wong: Thank you, Madam Chair. I just want to seek some clarification on the motion that was submitted by Mr. Hillier last week, because the motion was really explicit. Last week, when we moved a motion—

The Chair (Mrs. Laura Albanese): Ms. Wong, just one moment. I just want to specify that the clerk is distributing a copy of the motion just to refresh everyone's memory. Thank you.

You may continue.

Ms. Soo Wong: The motion that was submitted by Mr. Hillier said, "I move that we adjourn the Standing Committee on Justice Policy from clause-by-clause consideration of Bill 34 until this committee has deliberated on whether this legislation breaches the independence of the judiciary."

I just want to get some clarification, first of all, Madam Chair, because, as we know, Bill 34, in section 140(1) it's clearly stated—I'm not sure if people have it front of them—"Nothing in this part derogates from or replaces the power of a judge or judicial officer to control court proceedings."

So given that this is already set out in the bill, Madam Chair, I just need some more clarification on how we dispense this particular motion, and if Mr. Hillier is going to submit another motion today, that kind of stuff. I just want some clarification before we move on. I wanted that conversation first, Madam Chair.

The Chair (Mrs. Laura Albanese): The information has been provided.

Yes, MPP Yakabuski.

Mr. John Yakabuski: Thank you, Madam Chair. In response to my colleague on the government side, section 140 doesn't explicitly deal with the independence of the judiciary; it says clearly, "Nothing in this part derogates from or replaces the power of a judge or judicial officer to control court proceedings." The motion clearly was with respect to the independence of the judiciary.

While I have every confidence in the document prepared by Ms. Hindle in the research office, the motion further states that until this committee has deliberated—now, "deliberated" means that we've had the time to. We received the information now. That does not give us the time for deliberation.

With that in mind, I would move that we adjourn until members of the committee have the time to review and digest this research report, which is quite extensive and probably has some legal language in it. I would move that the committee adjourn until next Thursday so that each member of this committee has the opportunity to digest this report with also their own legal staff and advisers.

The Chair (Mrs. Laura Albanese): Mr. Yakabuski has moved that the committee adjourn until next Thursday. Any debate? MPP Miller.

Mr. Paul Miller: Madam Chair, I'll just tell you that we're not happy about this. I mean, you've had plenty of time to do your amendments. You've had plenty of time to prepare. These constant holdups are not very pleasant, to say the least, and we are expressing our disdain for what's going on.

We want to move ahead with this—it's very important to the people of Ontario—and we're getting held back. We probably won't support this.

The Chair (Mrs. Laura Albanese): Ms. Wong.

Ms. Soo Wong: While I appreciate Mr. Miller's comments, this committee also, late last night, received amendments from the NDP. With due respect, Mr. Miller, your party also submitted five new additional amendments. I just read them late, late last night. So we do respect Mr. Yakabuski's motion of asking for timely process so that all of us can review everything. I want to be very clear.

The other thing here: If we are going to be adjourning until next Thursday, at which time we will be resuming the clause-by-clause—I have no problem adjourning, Madam Chair, but I want to make sure that we will be going to clause-by-clause for sure next Thursday, in terms of this piece.

The Chair (Mrs. Laura Albanese): That would be up to the will of the committee.

Mr. John Yakabuski: I won't predict what happens next Thursday. But Ms. Wong has said the third party introduced five new amendments yesterday. I have yet to see those new amendments, which would—if they're on the desk here, this will be the first. I haven't even had a chance to go through all the papers.

But speaking to the original motion, it was very clear that the committee have time to deliberate on the effect that it has on the independence of the judiciary. This is the report. It doesn't mean that we've read it, absorbed it, digested it and determined our own conclusions as to how it may or may not affect the independence of the judiciary. With respect to Mr. Miller's concern, and I understand that, the motion was clear. We were supposed to have time to deliberate on this issue, and I think that in fairness we have to be given that. We did, in fact, pass the motion.

The Chair (Mrs. Laura Albanese): Before we move to Mr. Singh, I just wanted to specify that the amendments were emailed yesterday evening. They should have gone to all members. We'll double-check the distribution list, to make sure that everyone is included. We all should have received it.

Mr. Singh.

Mr. Jagmeet Singh: Yes, in fairness—I'll address both Ms. Wong and Mr. Yakabuski, both their concerns. Ms. Wong is absolutely correct that there were some amendments that were sent late. I understand that both parties want to review those.

Just to clarify, those amendments aren't substantially different. They are what we had already proposed, but just clarifications, some modifications, some corrections that we had caught when I sat down with legal counsel. So they're essentially in the same spirit that had been initially presented, just some modification in terms of language. But I still recognize and understand that both parties would need to review that. That's very reasonable.

With respect to Mr. Yakabuski's motion and argument, in terms of the actual motion that was passed, in fairness, it is correct that it does suggest that we should deliberate. In that fashion, reviewing the material that's presented before us and then deliberating does make sense, because it is what the spirit of that motion was as well: that we will review the material and then debate it.

I can also further add that, in fact, that issue is clearly addressed in two amendments that I've proposed, where we support the independence of the judiciary in the NDP motion. So it's there, and I ask both parties to look at that as potential ways of remedying this issue.

The Chair (Mrs. Laura Albanese): Any further debate?

Mr. Yakabuski has moved adjournment of the committee until next Thursday at 9 a.m. All those in favour? Opposed? Carried.

The committee adjourned at 0917.

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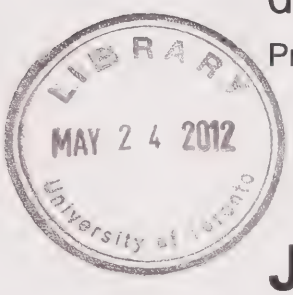

Official Report of Debates (Hansard)

Thursday 10 May 2012

Journal des débats (Hansard)

Jeudi 10 mai 2012

Standing Committee on Justice Policy

Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2012

Comité permanent de la justice

Loi de 2012 sur la sécurité des tribunaux, des centrales électriques et des installations nucléaires

Chair: Laura Albanese
Clerk: William Short

Présidente : Laura Albanese
Greffier : William Short

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 10 May 2012

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 10 mai 2012

The committee met at 0905 in committee room 1.

SECURITY FOR COURTS, ELECTRICITY GENERATING FACILITIES AND NUCLEAR FACILITIES ACT, 2012

LOI DE 2012 SUR LA SÉCURITÉ DES TRIBUNAUX, DES CENTRALES ÉLECTRIQUES ET DES INSTALLATIONS NUCLÉAIRES

Consideration of Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012 / Projet de loi 34, Loi abrogeant la Loi sur la protection des ouvrages publics, modifiant la Loi sur les services policiers en ce qui concerne la sécurité des tribunaux et édictant la Loi de 2012 sur la sécurité des centrales électriques et des installations nucléaires.

The Chair (Mrs. Laura Albanese): Good morning, everyone. I call the Standing Committee on Justice Policy to order. We're here to consider Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012.

I believe that the first item we have on our agenda would be—I guess I would ask the members if you've had enough time to consider the motion that was put forth a couple of weeks ago, two weeks ago, I believe, by MPP Hillier, and if you've had enough time to consider whether the bill preserves the independence of the judiciary.

If you would like, I can read that motion. At that time, it was, "I move that we adjourn the Standing Committee on Justice Policy from clause-by-clause consideration of Bill 34 until this committee has deliberated on whether this legislation breaches the independence of the judiciary." Has everyone had time to consider this?

Mr. Steve Clark: No.

Mr. David Zimmer: I just got subbed in.

Mr. Steve Clark: I just got subbed in, too. I haven't had time.

Interjection: I'll defer to my whip.

The Chair (Mrs. Laura Albanese): Ms. Wong?

Ms. Soo Wong: Madam Chair, the motion by Mr. Hillier two weeks ago has been included in our bill. I believe the NDP amendments also address this particular motion. So when we go through clause-by-clause, it will be addressed, coming out. I believe that the motions brought forth by Mr. Hillier will be addressed when we go through clause-by-clause, when we deal with amendments.

Mr. John Yakabuski: That's—

Mr. Paul Miller: I don't think that was the question.

The Chair (Mrs. Laura Albanese): One at a time. MPP Miller.

Mr. Paul Miller: Last week, when we postponed to this week, I tried to tell the committee that those things were involved and, basically, it was just housecleaning. They were involved in your amendments, and we delayed a week. Here we are again with another possible delay because somebody didn't read something. So I'm not a happy camper.

The Chair (Mrs. Laura Albanese): Any other comments? MPP Yakabuski.

Mr. John Yakabuski: Well, we know that Grumpy has joined the meeting. We're hoping that Happy and Sneezy show up a little later—

Mr. Paul Miller: Well, we've got Dumbo, so we're okay.

Mr. John Yakabuski: And who would that be, I ask?

Mr. Paul Miller: I don't know.

Mr. John Yakabuski: You called yourself Grumpy, Mr. Miller. I wasn't taking a personal swipe at you.

Mr. Paul Miller: Oh, yes, you were.

Mr. John Yakabuski: That's a bit unfair to imply.

Mr. Paul Miller: Cheap shot.

Mr. John Yakabuski: No, that's a cheap shot. Are you calling me Dumbo?

The Chair (Mrs. Laura Albanese): Let's keep it parliamentary, please.

Mr. John Yakabuski: Yes. Mr. Miller always says to the people in the House to take it outside. I'm not sure what he's suggesting here, but anyway.

Look, the motion by Mr. Hillier did not say whether this can be dealt with during clause-by-clause. The motion by Mr. Hillier was pretty clear. It said—

Mr. David Zimmer: Where's Randy to tell us about it?

Mr. John Yakabuski: Randy doesn't have to tell about the motion. I can read it, I say to Mr. Zimmer.

The Chair (Mrs. Laura Albanese): I just read it, as well.

Mr. John Yakabuski: The motion is pretty clear: "we adjourn the Standing Committee on Justice Policy from clause-by-clause consideration of" this bill "until this committee has deliberated on whether this legislation breaches the independence of the judiciary."

Ms. Wong's assertion that the independence of the judiciary will be dealt with in the process of clause-by-clause is counter to the motion. The motion is clear that it must be dealt with prior to clause-by-clause consideration of this bill. So I'm sorry, but I have to disagree most vehemently with her assertion that we can move on with clause-by-clause and deal with it during that process. Once you start the process, it's sort of like that snowball going down the hill, Madam Chair. As you know, it's very difficult to stop.

The intent of the motion was very clear, that we would have to deliberate on this prior to clause-by-clause. If there's somebody who has a different legal opinion on this—I'm not a lawyer—

The Chair (Mrs. Laura Albanese): Thank you for that. On May 2, all the members of the committee received a research paper that spoke about Bill 34 and the independence of the judiciary. I would expect that all members have read it. Are we ready to deliberate?

Mr. John Yakabuski: I suppose we can deliberate. I have other motions as well, but if we want to deliberate, are we setting aside today to deliberate? Or what are we—

The Chair (Mrs. Laura Albanese): Well, it's the first item on the agenda. We cannot proceed with clause-by-clause unless we deliberate on it.

Mr. David Zimmer: Point of order: Can I have a copy of the motion? I just got subbed in.

The Chair (Mrs. Laura Albanese): Absolutely.

Mr. John Yakabuski: I just don't think the intent, Madam Chair, is to deliberate in committee. Committee is where we deal with clause-by-clause. If you definite how a jury deliberates, they don't deliberate in public. They do not deliberate in front of the court. They're sequestered when they deliberate so that they can have that kind of discussion that is totally free of any encumbrances that may be placed on them by third parties being in attendance. Deliberation does not imply that you would have that in public.

0910

The Chair (Mrs. Laura Albanese): Thank you, MPP Yakabuski. I have Mr. Berardinetti and Mr. Miller, but I assume that you would have had that time to—

Mr. John Yakabuski: You asked if we were going to deliberate.

The Chair (Mrs. Laura Albanese): —since May 2. Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Just a question for the clerk. You were here, I think, last week, or at least the previous time—someone from the clerks' department was here—and the motion was to deliberate. We've had the opportunity to deliberate. We have a report here from the research department, and I read the report. Was any motion moved that we as a group should move into private session and deliberate?

The Clerk of the Committee (Mr. William Short): No.

Mr. Lorenzo Berardinetti: No?

The Clerk of the Committee (Mr. William Short): No, there wasn't.

Interjection.

Mr. Lorenzo Berardinetti: Hang on. I've got the floor. I'll give it to you in a second. You can have it as long as you want. I just want to ask a few more questions about this.

The Chair (Mrs. Laura Albanese): I don't know if you want to say on your own—

The Clerk of the Committee (Mr. William Short): I think the point of the motion was that the members would take what research gave them, go back with it, deliberate about it and then come back to committee today with the intention of either starting clause-by-clause or discussing further the independence of the judiciary and Bill 34.

Mr. Lorenzo Berardinetti: So as we go through clause-by-clause, can we refer to this research item, which discusses the item about Bill 34 and the independence of the judiciary? That was the last report I got.

The Chair (Mrs. Laura Albanese): That would be the will of the committee. I'm going to go to Mr. Miller and—

Mr. Lorenzo Berardinetti: I'm sorry, I still had the floor. With the greatest respect, I still have a few more questions here, and then I'm willing to hear from any opposition members or other members of this committee.

We did receive this report. We received it—I forget which date it was. Was it May 2?

The Chair (Mrs. Laura Albanese): May 2.

Mr. Lorenzo Berardinetti: And today's date is May 10.

The Chair (Mrs. Laura Albanese): It's dated May 2.

Mr. Lorenzo Berardinetti: Okay, so we've had eight days to review this document. I'm not going to ask a leading question, but I just want to know: In your view, is there any reason not to go to clause-by-clause today?

The Chair (Mrs. Laura Albanese): The clerk says it wouldn't be his view; it would be the will of the committee.

Mr. Lorenzo Berardinetti: Okay, but is there any reason to stall clause-by-clause to decide to deliberate as a group in private?

The Chair (Mrs. Laura Albanese): I believe the answer would be the same: It's the will of the committee.

Mr. Lorenzo Berardinetti: Mr. Clerk, do you have any documentation or any motion in front of you that says we should deliberate privately before we—is there a motion on record? Maybe I missed the motion that was here.

The Clerk of the Committee (Mr. William Short): No, there was no motion to deliberate privately. If the committee would like to start clause-by-clause right now, the committee could feel free to start clause-by-clause

right now. If the committee doesn't want to start clause-by-clause right now, then the committee can continue deliberating about the independence of the judiciary or—

Mr. John Yakabuski: Well, I would like to—

Mr. Lorenzo Berardinetti: Excuse me, I have the floor, with the greatest respect.

Mr. John Yakabuski: Well, how many questions do you get—

Mr. Lorenzo Berardinetti: Yes, you do.

The Chair (Mrs. Laura Albanese): One second. I think he was recognized—

Mr. Lorenzo Berardinetti: Mr. Yakabuski, I can go up to 20 minutes. If you don't believe me, just get the copy of the standing orders for committees and read that.

Interjection.

The Chair (Mrs. Laura Albanese): He still has the floor.

Mr. Lorenzo Berardinetti: The Chair has ruled I still have the floor, and I'll be glad to listen to your arguments. Just to repeat what you said: There's no reason that you are aware of not to go to clause-by-clause today—any technical reason.

The Clerk of the Committee (Mr. William Short): Again, if the committee would like to commence clause-by-clause on Bill 34 today, that would be up to the committee and that would be fine. And if the committee doesn't want to commence clause-by-clause today, then that would be up to the committee as well.

Mr. Lorenzo Berardinetti: Okay. In your experience, has there ever been a deliberation by all three parties in private over a research document?

The Clerk of the Committee (Mr. William Short): In this current example, there was a motion that was carried by the full committee to deliberate on whether or not the independence of the judiciary was breached by Bill 34. The committee received a legislative research document on May 2. The committee then did whatever they did with that document, and now we're back here today to decide whether or not to move forward with clause-by-clause or to continue deliberating whether or not Bill 34 does breach the independence of the judiciary.

Mr. Lorenzo Berardinetti: Okay. But in your experience, has a committee ever decided to deliberate a research document before commencing clause-by-clause?

The Clerk of the Committee (Mr. William Short): In my personal experience?

Mr. Lorenzo Berardinetti: Yes.

The Clerk of the Committee (Mr. William Short): Off the top of my head, I can't think of an example where that happened, but it may have happened with other committees. It could happen in the future with other committees.

Mr. Lorenzo Berardinetti: Okay, but you've never had this experience before, where we deliberate.

Okay, thank you for those questions.

The Chair (Mrs. Laura Albanese): Thank you. The floor now goes to MPP Miller.

Mr. Paul Miller: There seems to be a problem again, stalling again. If we have a problem, the opposition party can ask to end debate on this and move it to next week, if they're having a problem with it. They can ask for that and vote on it. If not, you've got the other two options, as Mr. Berardinetti said. You could move into a private discussion about it, if the committee so chooses, or you could just not deal with it and cancel it again, until next week. So there are options here. We don't have to be arguing over petty things. Either it's yea or nay—very simple. And it's up to the committee, as you stated, Chairman.

The Chair (Mrs. Laura Albanese): Thank you. MPP Zimmer?

Mr. David Zimmer: That's fine.

The Chair (Mrs. Laura Albanese): MPP Wong?

Ms. Soo Wong: Madam Chair, I believe Mr. Hillier brought forward the motion that we're discussing this morning two weeks ago. At that time, he moved adjournment of this committee and we did not go through clause-by-clause. Now we're hitting the third week. Last week, if my recollection is correct—Mr. Short could tell us if I'm correct in this statement—the research department gave us this independent judicial report; am I correct? We were supposed to be going through clause-by-clause today. Okay?

I understand there are two members here today who are subbing; I recognize that. But there are a majority of members on this committee right now as we sit who have received this report from the research department. It's our responsibility, Madam Chair, to move forward.

I am extremely disappointed, Madam Chair, that we are putting the safety—I want to be on record—of Ontarians at stake here. Mr. Justice McMurtry very clearly in his report wants this government, every one of us in Parliament, to amend the PWPA. The longer we delay this process, it puts every Ontarian's safety at stake. That's the first thing. I want that to be on record.

The other thing I'm extremely concerned about is that we just heard from Mr. Short, to my colleague's question, that in his experience, in his opinion, we have never used this kind of strategy as a delay tactic to go to clause-by-clause. Again, Madam Chair, I want to be on the table to say, are we here to work, to support and protect the safety of every Ontarian? I want to be very clear: I'm here to support and make sure every Ontarian, whether we go to a courthouse or a nuclear facility, is safe. I am very disappointed if we don't go through clause-by-clause. I think my opposite colleague, Mr. Miller, is saying the same thing; he's nodding.

It is our responsibility, those of us who are here, who received this report last week, to make sure we read the report. I do understand that the two members who are subbing in may not have had an opportunity.

Moving forward, Madam Chair, I think that we need to deliberate clause-by-clause and move forward. Those are my comments.

The Chair (Mrs. Laura Albanese): MPP Singh?

Mr. Jagmeet Singh: Thank you very much. Just with respect to the issue of judicial independence, that issue, in my respectful submission, is addressed in the amend-

ments. There are certain amendments that are brought forward that specifically address that issue. Those who have a concern with that issue can vote on that issue and support that amendment, and we could have that addressed completely. They're actually addressed at least two times in the amendments, that I know of. I know the government has some amendments that speak to that. I certainly have two amendments that speak to that. The issue of judiciary independence is established in the amendments, or is proposed in the amendments, and we can support that.

I also agree with MPP Wong and my colleague Mr. Miller that we should move ahead now. We've had time to review this issue and I think, with the amendments, we can address them sufficiently.

The Chair (Mrs. Laura Albanese): MPP Yakabuski?

Mr. John Yakabuski: Thank you, Chair. I want to address first Ms. Wong's comments with regard to public safety and how disappointed I am that she would throw that card onto the table. We've been conducting our courts and protecting our courts and our nuclear facilities under the PWPA, and are still doing so. Public safety has not been compromised and will not be compromised. Whether this committee is meeting or not meeting, the current law remains in place.

0920

There's a very good reason why the government wanted to update the law. Quite frankly, it's because of the mess they made of the G20 summit here in Toronto. So they're under a great deal of pressure.

The Ombudsman released a report called Caught in the Act that literally ripped you folks apart on the way that you handled the G20. That's why we're here with an update to the Public Works Protection Act, but the act remains in effect, I say to Ms. Wong, until such time as a new statute receives royal assent. So that kind of hyperbole I don't think is valuable to this committee, and I'll put that on the record, that that kind of exaggerated hyperbole is not helpful.

Now, to the motion itself, and with all due respect to the clerk, Mr. Short, I suppose the committee can decide what it wants, but the committee should also be expected to abide by the motions that it has passed. Without that, it should have to pass a separate motion saying that we are overruling the motion.

But the motion is very clear. It doesn't say that individual members of the committee have deliberated. In fact, if it was individuals, it would say, "have deliberated." It's plural—"has deliberated." The committee is a single entity and must be treated as such. We are members of the committee, but the committee must deliberate as a group, just as a jury deliberates as a group. You don't send 12 members of a jury off to separate corners to their thinking place, and come back out and say, "Yeah, we've deliberated." "How'd you make out?" No, they have a very complete discussion of all of the evidence that is placed before them and all of the facts, and they review that and they review testimony, and sometimes deliberation takes weeks, depending upon the nature of the case. But the deliberation takes place as a group, as a unit, so that when they leave that deliberation they have a thorough understanding of all of the discussions that have taken place with regard to the issue at hand.

To imply that deliberations can take place on an individual basis and we actually reach a proper consensus as to what is the best course of action or the best conclusion based on the motion that was placed before this committee by Mr. Hillier I think is a slippery slope. We have to do this as a group, as a unit. We are a unit; we are a group. We may have differing views on that group, but the hope is that at some point we reach a consensus based on the deliberation of the group.

Having said that, I expected last week to receive a call that the committee has to meet to deliberate this—not as a public sitting committee of the Legislature, but as a group—to deliberate the report that was given us to individually read, yes. But deliberation, I think, clearly implies that we get together .

The Chair (Mrs. Laura Albanese): Well, we are together, hence my question—

Mr. John Yakabuski: But not in a public forum, Madam Chair. To deliberate—you cannot deliberate in a public forum.

The Chair (Mrs. Laura Albanese): Ms. Wong.

Ms. Soo Wong: With due respect to my colleague's comment just now, I'm ready to work. This is the third consecutive week—I'm going to go again on record to say that—the third consecutive week of potential delay tactics in terms of going through clause-by-clause, and my colleagues from the NDP are prepared to work today to move clause-by-clause. So I'm going to move a motion to say that the committee will deliberate on this issue and will move forward with the clause-by-clause. I want to call the question on this issue.

The Chair (Mrs. Laura Albanese): At this point, how does the committee wish to proceed?

Mr. John Yakabuski: That's out of order, Madam Chair.

The Chair (Mrs. Laura Albanese): What's out of order?

Mr. John Yakabuski: For her to move that motion. We haven't dealt with the motion on the table.

The Chair (Mrs. Laura Albanese): So the original motion has been dealt with. It was voted on and carried on April 26. The outcome is what we have to deal with today. Do we want to deliberate in public? Are we ready to proceed with clause-by-clause? That is what we are discussing right now.

Mr. John Yakabuski: May I, Madam Chair? Are you ruling that this motion has been dealt with and that this committee has deliberated?

The Chair (Mrs. Laura Albanese): No. No, that's not what I said.

Mr. John Yakabuski: You just asked—the motion now is to move to clause-by-clause.

The Chair (Mrs. Laura Albanese): I started this meeting asking about this motion and whether the com-

mittee was fine with and satisfied with the independence of the judiciary. Just now, you brought forward the possibility that the committee deliberate as a group, whether in public or not. That was just brought up now to the committee, and that is what I've been referring to.

Mr. John Yakabuski: Thank you.

Mr. Paul Miller: Madam Chair, why don't we just take each item and deal with it—whatever they want to do—and just vote on it. If they want to continue with this motion, if they want to talk about this motion, let's vote on it.

I mean, this is like Twister here. Are we going to deal with what we have to deal with today, or are we going to play games?

The Chair (Mrs. Laura Albanese): That's exactly what we are discussing.

Mr. John Yakabuski: That is not the issue at hand, Madam Chair. With all due respect, whether or not the committee has deliberated is not a subjective thing. It's not whether it is in the mind of any member of this committee that they think we've deliberated because we went home or to our offices or whatever and may or may not have read a report. Deliberation is clearly defined, and it is not up to individual members to say, "I deliberated." No, the committee must deliberate.

The Chair (Mrs. Laura Albanese): The committee is here as a group right now.

Mr. John Yakabuski: That is the motion—

The Chair (Mrs. Laura Albanese): The committee is here as a group. So can—

Mr. John Yakabuski: I would ask that the motion be respected and that the committee be scheduled to deliberate on this information that was forwarded to us by the clerk and prepared by Karen Hindle, a research officer of the Legislative Research Service, prepared for the Standing Committee on Justice Policy, that a time be set aside for this committee to deliberate outside of the regular committee hearings so that deliberation can be done under the proper conditions, which is in a private room where each member has the opportunity to ask questions that they may or may not be willing to ask in a committee of the Legislature, for the purpose of deliberation and understanding this thing in its fullest way.

Ms. Soo Wong: Madam Chair, I do respect my colleague's comment. We got the motion here two weeks ago. The committee approved it, supported this motion. Last week, again, the staff gave us the report for us to go away to read. Those of us who received this report read it. My opposition colleague from the NDP agrees with my comment earlier that when we go through clause-by-clause, there will be discussion about this deliberation about the independent judiciary.

So, again, I want to call the question, because this is exactly what the public don't want us to do. This is another strategy by the PC Party, trying to stall the clause-by-clause. We're here because we were asked to have this report. Now we've got the report. We've all read the report, and at least five members of this committee agree that when we go to clause-by-clause, there will be an opportunity to address this issue.

Madam Chair, I'm going to go back again. I move a motion to say that the committee will deliberate on this issue and start moving on clause-by-clause.

The Chair (Mrs. Laura Albanese): Mr. Yakabuski.

0930

Mr. John Yakabuski: Thank you, Madam Chair. Again, with all due respect to my colleagues, Ms. Wong has in her own words, said, "We've all read the report." "Read" is not deliberated. I would ask Ms. Wong: When did we deliberate? We've all, as she says—

Mr. David Zimmer: Call the question.

Ms. Soo Wong: Call the question.

Mr. John Yakabuski: —I believe I have the floor, Madam Chair.

The Chair (Mrs. Laura Albanese): Yes, you do.

Mr. John Yakabuski: I would ask the members of the committee—I accept that they've read the report, but the question I have, based on the motion that was tabled by Mr. Hillier, is when we deliberated.

The Chair (Mrs. Laura Albanese): I have Mr. Berardinetti and Mr. Miller and then Mr. Singh.

Mr. Lorenzo Berardinetti: I just want to look at the report that we received in early May, May 2, and just read this part into the record. I'll shut up after this. Page 2, introduction:

"On April 26, 2012, the Standing Committee on Justice Policy adjourned its clause-by-clause consideration of Bill 34, the Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2012, in order to consider 'whether this legislation breaches the independence of the judiciary.'

"Under Bill 34, a new section 138 of the Police Services Act would confer discretion upon authorized security personnel to require individuals entering or seeking to enter a courthouse to produce identification, information and/or submit to a search. A new section 140(1) would provide, however, that these powers are not meant to override the existing powers of judges and other judicial officers to control their proceedings," and I want this highlighted, this next section here:

"'140(1) Nothing in this part derogates from or replaces the power of a judge or judicial officer to control court proceedings.'

"This paper has been prepared to assist members in their deliberations on the bill."

I've ended my reference here.

Now, it's clear the paper was prepared to assist members in their deliberations on the bill, Bill 34. I see nothing in the report—if someone could find it—saying that this committee should deliberate before considering the bill; I'd like that pointed out to me. Thank you.

The Chair (Mrs. Laura Albanese): Thank you. MPP Miller?

Mr. Paul Miller: I just want to say that the concern of the official opposition—if they had a concern in the two weeks and they wanted to have it addressed, they could have called a subcommittee meeting. The three members of the subcommittee could have discussed it and agreed with it in the two-week period. We certainly could have

moved ahead today. If they had a problem, why did they leave it till the day of the committee when they had two weeks when they got it? They could have dealt with it, talked to people and straightened out the mess. But they didn't. They chose to wait till the day of the committee meeting to stall it again.

The Chair (Mrs. Laura Albanese): MPP Singh?

Mr. Jagmeet Singh: I agree with the comments that are going around with respect to Ms. Wong and Mr. Miller, my colleague. In fairness, the motion does indicate to deliberate, so if we want to cut right to the heart of the matter, let's deliberate now in public. We're here, we're sitting together. If that's really the issue, then I'm content to deliberate now. We can talk about the judicial independence. In fairness to Mr. Yakabuski, he's right that the motion that was put forward does say that we should deliberate. It doesn't necessarily say how. So maybe we could decide to deliberate now, as a committee that's sitting now, and we can discuss the issues. If that's agreeable, perhaps we could get right into deliberation.

The Chair (Mrs. Laura Albanese): MPP Yakabuski?

Mr. John Yakabuski: To Mr. Berardinetti's point about the report—and we are grateful for the report—that report designed to—I'm looking for where he said "assist." I believe he said "assist."

Mr. Lorenzo Berardinetti: Don't you have a copy of it?

Mr. John Yakabuski: Yes, but I—

Mr. Lorenzo Berardinetti: Page 2, top of the page. Just read the two paragraphs and the sentence afterwards.

Mr. John Yakabuski: I just wanted to make sure I quoted you correctly, or out of the report. It says, "This paper has been prepared to assist members in their deliberations on the bill." No argument there whatsoever. It's not designed to direct members of the committee on their deliberations of the bill. That's why we are duly elected members of this Legislature and appointed members of this committee: so that we can do our own thinking as to what actual results or conclusions we should draw from it. It is there to assist. It is informative and very valuable, and I will point that out. But it is not there that we accept this chapter and verse, as the gospel; we will have the opportunity and we should have the opportunity to deliberate and then draw our own conclusions on how this does affect the independence of the judiciary.

To Mr. Miller's point—and I'll talk to him later, I suppose—it is not our responsibility, as the opposition, to move your legislation forward. To his point that we could have called members of the committee and said, "Let's have a meeting," I would expect that the government members of this committee received the same information. It is their legislation, Madam Chair. It is incumbent upon them to make the call to us and say, "Look, we've got this information. This is valuable information. It's informative. It's directly to the point of our concerns about the independence of the judiciary. It is designed to assist us in those deliberations. We need to have a meeting." It is their responsibility. It is not our responsibility, as opposition, to do the government's job.

The Chair (Mrs. Laura Albanese): Thank you, MPP Yakabuski. It seems to me that the majority of the members feel ready to deliberate now. I would ask the committee members if we are ready to deliberate here in public—and if we can discuss this matter, we can proceed with the discussion here in public—or otherwise? Mr. Yakabuski?

Mr. John Yakabuski: I object strenuously to a deliberation in public and would ask for a ruling from the Speaker as to whether this is actually in keeping with the way that the Legislature and the committees are supposed to work. I do not believe we have the right to deliberate in a public forum.

The Chair (Mrs. Laura Albanese): So would you put forward the motion, then?

Mr. John Yakabuski: I would put forward a motion that an opinion from the Speaker or the Clerk of the Legislature be sought out to ask whether or not we are allowed to deliberate in public on this or any other report. This is not clause-by-clause; this is about a deliberation on information that was handed to members of the committee, not handed to members of the public. I am concerned that we are going down a slippery slope if we decide that deliberations now take place in a public forum.

The Chair (Mrs. Laura Albanese): We're going to take a five-minute recess so that we can discuss this matter amongst us.

The committee recessed from 0938 to 0945.

The Chair (Mrs. Laura Albanese): So we're back in session.

I would start by saying that it seems there's nothing to stop us from deliberating this motion right here and now, in public. We do have legislative research and legislative counsel here and we also have ministry counsel, so there's nothing to stop us from deliberating this as a committee, as a group, here right now, in public. If you wish that the deliberation take place in a closed session, then you can move a motion to do so; otherwise, we can deliberate right here and now.

Mr. John Yakabuski: Can I hear the advice or the submission from the clerk, legislative counsel or ministry staff, based on legislative precedents or what? I have all respect for everyone who's doing their job in this place and understand that we're all here for the same purpose, but I think I have the right—

Interjection.

Mr. John Yakabuski: How disrespectful is that, Chair? How disrespectful is that?

Mr. David Zimmer: You're being disrespectful by your conduct.

The Chair (Mrs. Laura Albanese): Order.

Mr. John Yakabuski: That is just beneath a member of the Legislature—honest to God—sitting there reading a newspaper when serious discussions are going on.

Mr. David Zimmer: No. You're babbling.

Mr. John Yakabuski: That's ridiculous.

The Chair (Mrs. Laura Albanese): Order, please.

Mr. John Yakabuski: And then trying to intimidate or belittle other members of the committee while they're making testimony.

The Chair (Mrs. Laura Albanese): We are here—

Mr. John Yakabuski: I think that really is sad.

The Chair (Mrs. Laura Albanese): Please, order.

Mr. John Yakabuski: Perhaps Mr. Zimmer needs to have a break or something, I don't know, but when I have the mike, I'd like to have that mike.

The Chair (Mrs. Laura Albanese): We are here. There's nothing to stop us—

Mr. John Yakabuski: Okay, but I would like to have from legislative counsel, legislative clerks, some kind of indication that—I'm not a legislative expert. I don't know all the rules.

Mr. David Zimmer: That's obvious.

The Chair (Mrs. Laura Albanese): Please, order.

Mr. John Yakabuski: As the Speaker makes rulings in the House, he gives us the justification behind the ruling, and I think that is a fair request.

Mr. Lorenzo Berardinetti: Point of order, please: I think that the Chair, who is in charge, has ruled, and I think the member has every right to challenge the Chair.

Mr. John Yakabuski: I'm not challenging the Chair.

Mr. Lorenzo Berardinetti: Well, then, we're into discussion all day long on this. I think the Chair has ruled, and if I'm wrong, I can be corrected and I will apologize. But my understanding of how a committee works is that if the Chair has made a ruling, you can challenge that; it's within your right to challenge the Chair. Let's do that. Let's vote on the challenge to the Chair.

The Chair (Mrs. Laura Albanese): The question right now is whether we want to deliberate in public or in a closed session, and I would ask the members' opinion on that.

Ms. Soo Wong: I want to call the question on deliberation, Madam Chair.

The Chair (Mrs. Laura Albanese): Are we ready to deliberate in public?

Ms. Soo Wong: Yes.

Mr. John Yakabuski: Has anyone made a motion?

Ms. Soo Wong: Yes, I did.

Mr. John Yakabuski: Where is the motion?

The Chair (Mrs. Laura Albanese): The committee can agree if they want to proceed. If there is an agreement, then we'll put forward a motion. Is there an agreement to deliberate in open session?

Mr. Paul Miller: One quick question: Mr. Yakabuski is correct in that he has a concern about not having it in front of him. I'm asking the clerk: Do we have to have it in written form or can the committee agree to do it verbally?

The Chair (Mrs. Laura Albanese): The clerk is reiterating basically what I said just a few moments ago: If the committee agrees, we can move ahead to deliberate this in public; if the committee does not agree, then we will need a motion to deliberate in a closed session.

Mr. Paul Miller: Can we have someone at least read the body of the motion so we understand it? Ms. Wong said she put it in, but I don't have it in front of me. Even a verbal—

The Chair (Mrs. Laura Albanese): We're not looking at a motion right now.

Is there agreement from the committee to deliberate in open session? That is the question. Yes or no?

Mr. John Yakabuski: No.

The Chair (Mrs. Laura Albanese): Okay, so it's no. We will proceed. Mr. Yakabuski has said no, so that there's no agreement from the committee. How would you like to proceed?

Mr. John Yakabuski: Well, Madam Chair, I asked a question, and I would hope I would get an answer—and if you rule that I don't have the right to get that from legislative counsel or the clerk, I accept that. But I asked if I could have some precedents, justification for the ruling that we can do this so that I can be comfortable that this is not outside the orders of the proceedings. No one responded to me on that. So, either if you would be so kind as to say, "No, that's not necessary. We can proceed, Mr. Yakabuski"—or I will attempt to secure that from the legislative counsel or the clerk. No one answered my question.

The Chair (Mrs. Laura Albanese): MPP Yakabuski, no, it's not necessary.

Mr. John Yakabuski: Okay. Thank you very much.

The Chair (Mrs. Laura Albanese): You're welcome.

Now the decision is, do we want to deliberate in the public session or do we want to deliberate in a closed session?

Can someone move a motion?

Ms. Soo Wong: I'll move a motion.

The Chair (Mrs. Laura Albanese): Ms. Wong has moved a motion—

Ms. Soo Wong: Motion to deliberate in a public session.

The Chair (Mrs. Laura Albanese): All those in favour? Carried. So we will deliberate in open session.

Mr. Lorenzo Berardinetti: Excuse me. Can we get a recorded vote on that?

The Chair (Mrs. Laura Albanese): There's no recorded vote. You should have asked for it before.

We ask legislative research to come up, please. She will start the opening discussion on the research paper.

Mr. John Yakabuski: Madam Chair, if I may, before we start this, we do have a vote in the House. It is now inside 10 minutes. It is customary for the committee to recess within 10 minutes, I believe.

The Chair (Mrs. Laura Albanese): The rule is five to 10 minutes, and it's at the Chair's discretion. I will make sure that members are on time for the vote.

Mr. John Yakabuski: Do you want to start now and put in a few minutes or do you—

The Chair (Mrs. Laura Albanese): Yes, we will start now and put in a few minutes.

Mr. John Yakabuski: That's at your discretion, Chair. I abide by the rules of the Chair.

Ms. Karen Hindle: Good morning, everyone. I trust that everyone has a copy of the report.

Mr. Steve Clark: Chair, this is my first look at the report, and I just wondered if we could have a short recess so that I can read this report.

The Chair (Mrs. Laura Albanese): We'll go up for the vote now, and then when we come back, we'll continue with legislative research, hoping that that will also give you enough time to read the report.

Mr. Steve Clark: That's not going to give me enough time.

The Chair (Mrs. Laura Albanese): Are you making a specific request, MPP Clark?

Mr. Steve Clark: I'm making a specific request to allow me to read this report. I would move that we defer this discussion until next week when the committee meets.

The Chair (Mrs. Laura Albanese): Ms. Wong?

Ms. Soo Wong: Madam Chair, if the will of the committee is to adjourn till 2 o'clock to allow Mr. Clark to read this report—I just want to be clear. There are members in this committee today who are subbing for others. I respect that. If, every week, different parties have different sub members and are using the tactic of reading the report as a way to delay and further delay the process, I will be concerned. If, to allow the member subbing in today to read the report, we're coming back to deliberate clause-by-clause this afternoon, then I have no problem with that request. But if, this afternoon, there will be another member coming into the committee from the PC Party and asking for another delay, I will be concerned. Do you see what I'm getting at—

The Chair (Mrs. Laura Albanese): Thank you. We will move to recess so that we can go up for the vote, then we will come back down, we will have legislative counsel do the presentation, and we'll deal with the motion. Is that okay? We will recess for the vote.

The committee recessed from 0953 to 1012.

The Chair (Mrs. Laura Albanese): We're back, and we have a motion in front of us, put forward by MPP Clark, that asks the committee to adjourn until next week to have time to read the research package. Correct? Did you want to repeat the motion, MPP Clark?

Mr. Steve Clark: I think the word is "deliberate."

Just speaking to the motion, I've had the opportunity to read a couple of lines of this report, and I think you know, Chair—we've served on committees together—that I'm not afraid to deliberate and discuss reports. I think those who know me know that I'm sincere in asking for a delay—a deferral.

I believe very strongly, given some of my duties today—we've got question period coming up this morning, and I have a meeting that I'm going to immediately after question period; I'm going to participate, in my new role as deputy House leader of our caucus, in a House leaders' meeting that meets just prior to this afternoon's session.

So I'm asking consideration that we defer the request. I appreciate the history. I understand the history of the discussion this morning about the fact that this motion and this report have been in others' hands for a period of time and they have had an opportunity to at least familiarize themselves with the report and recommendations and the background. I, unfortunately, have not.

I'm trying to be fair and reasonable, because I want to participate in the discussion, and I feel that it's not an unreasonable request. So I would ask that other members adhere to my request and we move forward in that light.

The Chair (Mrs. Laura Albanese): Further discussion?

Ms. Soo Wong: Madam Chair, I do understand the request and the motion from Mr. Clark. I want to ask the PC members on the committee, because there have been three consecutive weeks of revolving-door subbing from your members—my question to you, Mr. Clark, is: Will you be back here next Thursday prepared to go through clause-by-clause and not send another member? Because at the end of the day—as I said earlier, yes, we do have PWPA right now still standing to serve the public in terms of safety, but we have to make sure, moving forward, of the safety of Ontarians, as requested by Mr. McMurtry in his report asking us to repeal the act.

So my question to you, Mr. Clark, through you, Madam Chair, is: Will Mr. Clark be here next week or are we going to have a fourth consecutive week of subbing?

Interjections.

The Chair (Mrs. Laura Albanese): One at a time, please. MPP Clark.

Mr. Steve Clark: Chair, through you to the parliamentary assistant, I'm not going to debate where I'm going to be or where I'm not going to be next Thursday. We all know our schedules are very fluid. Things happen. My intention is to review this document and be prepared to participate in the discussions of this committee. However, I cannot, given the schedules of MPPs—we all know what our schedules are like. We all know that things happen in our ridings; things happen here at Queen's Park.

I believe, Chair, through you to the parliamentary assistant, that my comments stand. I believe they're fair and reasonable. I want to participate in the discussions here at the Standing Committee on Justice Policy. But I'm sorry, the fact that I received the document when I did has not and will not give me the opportunity to participate in the deliberations as per Mr. Hillier's original motion.

The Chair (Mrs. Laura Albanese): Okay, given that this committee—

Ms. Soo Wong: Madam Chair, I still have—

Mr. Steve Clark: I would ask—

The Chair (Mrs. Laura Albanese): One person at a time, please.

Mr. Steve Clark: I would ask the committee to look favourably upon this request.

The Chair (Mrs. Laura Albanese): One second, please. I just want to remind the committee members that we have to adjourn by 10:25, so please be concise in your remarks.

MPP Wong?

Ms. Soo Wong: Madam Chair, with due respect for Mr. Clark's comment to the committee, my concern—I want to verbalize them on record. This has been the third consecutive week that there have been delay tactics by the official opposition party, by different sub members. That's the first concern.

Mr. Clark, to be fair, I have no problem to allow you to have this report to be read, so that you have due time for reading. But I do have grave concern and disappointment that we're going to go through this charade again next week, with a fourth member from the PC Party subbing in and doing another delay tactic. I have grave concern.

I wanted to be on record with those comments, Madam Speaker.

The Chair (Mrs. Laura Albanese): MPP Zimmer.

Mr. David Zimmer: I just want to build on what Ms. Wong has said. I appreciate the difficulty. Mr. Clark has been subbed in late and hasn't had a chance to read over the report.

I think the danger here, on a going-forward basis, is that we set a very dangerous precedent. It has been going on now for three weeks. Mr. Clark comes, and his whip has put him into this committee. That's a decision that his whip has taken for whatever reasons, but Mr. Clark comes not prepared, because he has been subbed in at the last minute. That's not his fault, but there's a problem when, every week, higher-ups in a political party sub in somebody at the last minute.

If we adjourn to let Mr. Clark consider the materials that have been prepared, then what do we say next week when, if Mr. Clark is not here, someone else is subbed in at the last minute and makes the same request and refers to the precedent set by this committee? Then we're into a situation where, every week, there will be a last-minute substitution and a request to adjourn to consider the report. In the argument for the request to adjourn to consider the report, they'll be pointing to the precedent of what happened last week at this committee, and the week before, and the week before.

So you take that delay tactic and you couple it with the ringing of the bells—and we had a ringing of the bells just a few minutes ago. We had to leave here and go there and vote. It's a combination of all of these things that is making this place dysfunctional.

Although I appreciate Mr. Clark's difficulty, as does Ms. Wong, can we have some assurance from the committee, Chair, from the clerks' office, from the other side, that this is the last time this will happen, and that if someone is subbed in next week and comes back with the same argument, we're not going to adjourn it again?

In other words, we should send a message to the whip's office at the Conservative PC caucus that enough is enough. If you're going to substitute somebody, give them sufficient notice that they can come prepared and not raise these adjournment arguments. That's the danger here.

1020

The Chair (Mrs. Laura Albanese): Thank you. MPP Yakabuski and then MPP Berardinetti—

Interjection.

The Chair (Mrs. Laura Albanese): No, sorry. I'm following a timeline here.

Mr. John Yakabuski: Nice try.

Interjection.

Mr. John Yakabuski: Are you challenging the Chair, Mr. Berardinetti?

The Chair (Mrs. Laura Albanese): I am following the members, and as I see the hands go up I am respecting every member—

Interjections.

The Chair (Mrs. Laura Albanese): Please, order. Order. Thank you. MPP Yakabuski.

Mr. John Yakabuski: Wow, I'll tell you. Some people have their knickers in a knot, today, don't they?

The Chair (Mrs. Laura Albanese): Please, I would remind members, please let's be concise. We don't have a lot of time before—and I would like MPP Berardinetti also to speak.

Mr. John Yakabuski: Well, Mr. Zimmer went on for a long time about what may happen in the future and made all kinds of spurious accusations about what the motivations of members of this committee are. But we've got a motion before us moved by Mr. Clark. Let's talk about the motion.

Mr. Clark has not had the opportunity to deliberate on these issues. It wasn't planned that Mr. Clark was going to be a member of the committee, but do we want a member of this committee to be voting today on motions that may rise out of this deliberation?

Interjection.

Mr. John Yakabuski: Madam Chair, please.

The Chair (Mrs. Laura Albanese): Please proceed, MPP Yakabuski.

Mr. John Yakabuski: Do we want a member to be voting on these when he has stated himself that he had not had the time to deliberate? He has made it very clear that, based on his legislative schedule, he did not anticipate to be reading reports between 10:30 and 2 o'clock—he has other commitments—and that he will not have time to fully digest and deliberate on this report. His motion is a sound one. As for next week, I can't predict—I don't know the weather; I don't know who's going to be alive or dead. But I do know this: Mr. Clark is not prepared to deliberate or pass judgment on this report tabled by legislative research today.

He has asked for a motion, and that is the motion that should be debated, not all these ideas of what may happen next week or the week after that Mr. Zimmer is putting forth. We've got a motion on the table—

Mr. David Zimmer: All part of your strategy—

The Chair (Mrs. Laura Albanese): Thank you, and a point well taken. It is now—

Mr. John Yakabuski: I'm not quite finished.

The Chair (Mrs. Laura Albanese): Oh, I thought you were—I thought you had wrapped up.

Mr. Lorenzo Berardinetti: I need just one—

Mr. John Yakabuski: He keeps interrupting. No. Mr. Zimmer keeps talking about how our tactics are to delay

and disrupt. We're sitting in a committee here, Madam Chair, when the Legislature—and he brought up bell ringing in the Legislature. For the record, everyone knows why those bells are ringing: Because the government has decided to ignore its own commitment to the Legislature. It ignored its own commitment when a motion was passed by the Legislature to form a select committee to deal with the Ornge scandal, which we hear more and more about every day—yesterday, $7 million likely in kickbacks going to executives at Ornge from the helicopter manufacturer. He talks about delay tactics, and then when the Minister of Health agreed that she would abide to form a select committee if the Legislature so ruled—

Mr. David Zimmer: Chair, surely his comments have to be on-topic.

Mr. John Yakabuski: Just like yours, Mr. Zimmer. Then after the Legislature passed a motion which members of the third party voted in favour of to establish a select committee to deal with the scandal at Ornge, the government ignored it. When they talk about respecting the Legislature, I point out that.

Subsequent to that—

The Chair (Mrs. Laura Albanese): MPP Yakabuski, it is now 10:25. Therefore, we have to recess until 2 o'clock. The motion is still on the table.

This committee will reconvene at 2 o'clock to deal with this motion. Thank you.

The committee recessed from 1025 to 1406.

The Chair (Mrs. Laura Albanese): The committee is reconvened.

We do have on the table a motion moved by MPP Clark that calls on the committee to adjourn until next Thursday so that he can deliberate over the research paper. That's a debatable motion, and we can resume that debate.

Before we do, could I ask each member to speak loud and clear, because we do have some difficulties at times in hearing them, so if everyone could make an effort to speak with a clear and loud voice.

I believe that Mr. Yakabuski had the floor when we left the room.

Mr. John Yakabuski: Yes, thank you very much, Madam Chair. Where we were stuck upon at the time—and I will do my best to keep my voice loud and clear. I sometimes do get into that whisper mode. Actually, you know, this is my style.

Anyway, Mr. Clark had made the point—and I was supporting him—with respect to the unlikely opportunity that he would have to actually deliberate upon this extensive report that was presented to us last week with respect to today's committee work, given that he was not at the committee last week and that, as you know, at 10:30 we have question period, a committee meeting, a House leaders' meeting and, of course, by that time we're pretty much back here. Somehow, he might have—I don't know if he even was able to snag some lunch or not. So, to be fair, we have members who are sitting in on a committee and deliberating, as the committee has now voted, to deliberate in public, here, today. That notwithstanding, it's a bit unfair to have one of your members—who would rightfully say probably himself that he feels a little unarmed when it comes to the debate and the deliberations because he hasn't had a chance to fully analyze and absorb all of the information in that report. So I believe that the motion he tabled this morning is in fact a valid one.

The Chair (Mrs. Laura Albanese): Thank you, MPP Yakabuski. I believe MPP Berardinetti was also—

Mr. Lorenzo Berardinetti: Thank you, and I really appreciate the remarks. I'm not being sarcastic here. There are a lot of things thrown in front of us, and I agree that it's difficult. Mr. Clark walks in, and suddenly this research paper is thrown in front of him. Nobody can read it in one quick moment. So I'd like to move a friendly amendment to that motion, if you don't mind, or if nobody minds or objects. I think this is an important piece of paper—the one prepared by Karen Hindle, the research officer of the Legislative Research Service, dated May 2nd. I'd like to just add a friendly motion. We may have new members showing up next time as well. The NDP may have the same issue.

So I would like to add a friendly amendment that all 107 members of the Legislature receive a copy of this report. That way, they can read it and if people are subbed on from the three parties, they'll at least have a chance to see the report and perhaps, if the whip for each party or the House leaders agree to this as well—I know it takes quite a few sheets of paper, maybe 15 sheets, but I'll ask that it be done on recycled paper or at the very least sent by email. I'd prefer a paper copy so people can read it and mark it up like I do. I'm doing this in all good intentions; there's nothing sneaky about this. But if everyone has a copy of this, then—we may get a sub coming in, and the sub may say, "I need to read this. Why was I thrown on this committee?" Ms. Armstrong was not here this morning; I don't think you were. You may have not read this paper. Were you here this morning?

Ms. Teresa J. Armstrong: No, I wasn't here this morning, but I'm on this committee. I took it upon myself to order the history last week, so I had the report and I've read this report, thank you.

Mr. Lorenzo Berardinetti: Oh, good, okay, because I've read it as well, and it's very informative. It talks about the different provinces and what they've done. The executive summary itself is very well worded and concise. Reading the whole thing, in general, gives us a very good overview—and we're dealing with important issues. We're dealing with security in courthouses and at nuclear facilities. The title's very clear, Bill 34 and the Independence of Judiciary. So for what it's worth, it's a friendly amendment. If you want to adjourn, then everyone gets a copy of this.

Mr. John Yakabuski: We would support that amendment.

Mr. Steve Clark: Absolutely.

The Chair (Mrs. Laura Albanese): Just to be clear—I didn't mean to interrupt you—it could be added to the end of the motion?

Mr. Lorenzo Berardinetti: I'm just saying—

Mr. Steve Clark: Chair, in the spirit of co-operation, I would be more than happy to modify my motion to include—

The Chair (Mrs. Laura Albanese): Okay. So it would be added.

Mr. Lorenzo Berardinetti: A friendly amendment.

The Chair (Mrs. Laura Albanese): Mr. Berardinetti has asked that we add at the end of the motion a request that all 107 members of the Legislature receive a copy of the research package.

Mr. John Yakabuski: Can I further amend that to 106?

Mr. Lorenzo Berardinetti: As long as it's the Speaker that you're talking about—and I don't know—

Mr. John Yakabuski: No, we're talking about we have one vacancy.

The Chair (Mrs. Laura Albanese): Yes.

Mr. John Yakabuski: There is a vacancy in the Legislature.

The Chair (Mrs. Laura Albanese): There is a vacancy.

Mr. Lorenzo Berardinetti: I'm sorry. My apologies.

The Chair (Mrs. Laura Albanese): Okay.

Mr. Lorenzo Berardinetti: One more thing, too. I'm sorry, because I realize this, too, and I apologize to Mr. William Short because he was not here last time. There was another person here, if I'm correct. Is that right?

The Chair (Mrs. Laura Albanese): Yes.

Mr. Lorenzo Berardinetti: He was here the first—

The Clerk of the Committee (Mr. William Short): I was at a subcommittee meeting for public accounts.

Mr. Lorenzo Berardinetti: Yes, but he wasn't here. So I don't know if you will be here next Thursday and maybe—

The Clerk of the Committee (Mr. William Short): I will be.

Mr. Lorenzo Berardinetti: You will be here. So you don't need a copy of this. I'm trying to think of anybody else that would need a copy here. That's all. It's a friendly add-on to the amendment just so that—the argument that's being put forward is that some people didn't get a chance to read this, but if everyone's provided with a copy and they're asked to come on a day or two before, hopefully they will still have this, can read it overnight and be prepared to debate this bill and the amendments.

Mr. John Yakabuski: We will accept that.

The Chair (Mrs. Laura Albanese): So the amendment would read that Mr. Clark has moved that the committee adjourn to next Thursday to deliberate—

The Clerk of the Committee (Mr. William Short): That's the original motion.

The Chair (Mrs. Laura Albanese): That's the original motion over the research paper—and all 106 members of the Legislative Assembly of Ontario receive a copy of the research document. Is everybody in agreement? Is the amendment carried?

Ms. Soo Wong: No, I have a question, Madam Chair.

The Chair (Mrs. Laura Albanese): Yes.

Ms. Soo Wong: Let me just be very clear: First and foremost, I have a question for the clerk before I comment on this motion and the friendly amendment from my colleague. I want to ask the clerk: When a sub member is coming into a committee, is it normal practice, if they have not read the report, that they hold down the committee hearing in terms of clause-by-clause review because of one member? Is that a normal practice here? Because I'm new, I want to ask the clerk: Is it normal practice in this Legislature that in a standing committee where we have been trying for the last three weeks to do clause-by-clause, because one sub member of the opposition party has not read the report, is it normal practice to do this kind of strategy so that they can read the report?

The Clerk of the Committee (Mr. William Short): First of all, all members can request that they see an amendment, a document, whatever the case may be, before they either vote on it or deal with it. In this case, Mr. Clark has decided that he feels the committee should be adjourned until next Thursday, until he can read this research document, and then he can possibly participate in the deliberations that the committee will have regarding Bill 34 breaching the insdependence of the judiciary.

It's never happened on a committee that I've clerked before. However, that's not to say that it couldn't happen in another committee or it couldn't happen in the future.

It's a valid motion that Mr. Clark has put on the floor that we're now debating and that Mr. Berardinetti has now moved an amendment to.

Ms. Soo Wong: Okay. So I just want more clarification on the motion and the friendly amendment from Mr. Berardinetti dealing with the distribution of this report. Is it not an easy undertaking for you as the clerk to distribute this report of—oh, I don't know, 40 or 50 pages—staff undertaking to distribute to 106 members, including the Speaker, without this additional amendment that Mr. Berardinetti asked for.

The Clerk of the Committee (Mr. William Short): If the committee wants me to distribute a copy to all members of the assembly, that's perfectly fine. I can do that.

Ms. Soo Wong: You don't need a motion for that. Am I correct?

The Clerk of the Committee (Mr. William Short): Well, documents that come to this committee go to the members of the committee only. If there is a request that it go to all 106 members, then I can do that as well. The practice is that our branch distributes whatever the committee is dealing with to people who are either substituted in for the entire time—for example, Mr. Yakabuski currently—or to people that we know in advance of the meeting are substituted in, and then they'll get a copy of it as well.

In this case, Mr. Clark showed up at committee today. We didn't have a substitute slip for him until this

morning, so he didn't receive a copy of the document in advance of the meeting.

Ms. Soo Wong: And I believe that this morning, my colleague Mr. Zimmer was also here subbing on another colleague, and he did not make a similar type of request.

Madam Chair, I recall this morning putting a motion on the table asking us to consider my motion, and I don't know what happened to it. The motion was not tabled. So I'm going to ask again, because I think we have voted on deliberation on this particular bill, and I'm asking again that we commence the clause-by-clause review and not do further delay.

I know there's a motion right now from Mr. Clark. I've asked for equal opportunity for my motion on the table to commence clause-by-clause, because at the end of the day—this is now the third consecutive week that there has been a request from the opposition to further delay the discussion and the clause-by-clause review of this bill. At the end of the day, I'm here; I wanted to start working three weeks ago. It is incumbent on each one of us—and I heard from Ms. Armstrong. She wasn't even here, but she is part of this committee, and she was able to read the report. So I have to challenge and not accept and not be supportive of Mr. Clark's motion, because we have been here three consecutive weeks, Madam Chair.

Yes, Mr. Yakabuski's concern was the fact that the PWA is still in existence. Yes, I recognize that. But look at the delay; look at the cost to the taxpayer. We're all mindful here about the cost to the taxpayer. I want it known, and I want it to be on the table—and I'm going to distribute my motion, Madam Chair—the fact that for three consecutive weeks now, we have not moved forward on this bill with clause-by-clause.

The Chair (Mrs. Laura Albanese): Ms. Wong, I appreciate your comments. This morning, when you put forward your motion, we had still not dealt with the original motion that was put forth by MPP Hillier and had been carried, so we were dealing with that. We were bound to make a decision on that, and that is why your motion was not out of order but just postponed, in a way, because we had to deal with that first. That is the reason why we are where we are now.

Ms. Soo Wong: Okay. Now that we have dealt with the deliberation—

The Chair (Mrs. Laura Albanese): We are still dealing with a consequence of that first motion, with a second motion put forth by MPP Clark because he was not able to read the report. So we're still dealing with the same issue that we were dealing with this morning. That's why we have this on the floor.

Ms. Soo Wong: Then, Madam Chair, let's call the question. Let's vote on the item that has been put forth by Mr. Clark, and then we'll deal with it.

The Chair (Mrs. Laura Albanese): Yes. First we have to deal with the amendment put forward by Mr. Berardinetti.

All those in favour of all 106 MPPs receiving a copy of the research package?

Interjection.

The Chair (Mrs. Laura Albanese): A recorded vote?

Mr. John Yakabuski: I'm asking for a recorded vote, and then I will ask for a 20-minute recess before the vote.

The Chair (Mrs. Laura Albanese): Okay, that's fine. So we'll recess for 20 minutes.

The committee recessed from 1420 to 1440.

The Chair (Mrs. Laura Albanese): We're back from recess. Order, please. We're back in session and we are now to vote on an amendment put forward by MPP Berardinetti: that all 106 members of the Legislative Assembly of Ontario will receive a copy of the research document. All those in favour?

Mr. John Yakabuski: Do we get further debate on this now?

The Chair (Mrs. Laura Albanese): No, we have already debated, and you asked for a recorded vote.

Ayes

Armstrong, Berardinetti, Qaadri, Singh, Wong,

Nays

Yakabuski.

The Chair (Mrs. Laura Albanese): The amendment carries.

We now go back to deal with the main motion put forward by MPP Clark, which is now amended. All those in favour?

Mr. John Yakabuski: Wait, wait. Do we not have time for debate on this now?

The Chair (Mrs. Laura Albanese): Yes, if the committee so wishes.

Mr. John Yakabuski: I am going to have to get that window closed because—

Mr. Steve Clark: It's the glare off my head.

The Chair (Mrs. Laura Albanese): It shines a spotlight on you.

Mr. John Yakabuski: It's a combination of things. Boy, I'll tell you, it's unbelievable. Perhaps we could recess. My eyes are just—

Interjection.

Mr. John Yakabuski: Yeah, I've got a headache. It looks like I'm not getting far with that one.

Back to Mr. Clark's original motion, which was, of course, that we recess until next Thursday because he did not have the opportunity to view the documents in a full and complete way, as it was only furnished with him—in fact, he was only furnished with them just before we went to vote on the motion that was before the House, the motion for adjournment that was before the House this morning, which was some time in the neighbourhood of 10 o'clock or so, I guess it was.

As I indicated earlier, Mr. Clark, given his schedule as a legislator, has not had the opportunity up till now to have, even in the recess—because there were discussions going on about how we might deal with this—I don't believe you've had a chance to get through it at this

point. So we are now going—if Mr. Clark's motion does not pass, just to be clear, then we are at a situation where we would then go to the deliberation stage of this committee—

The Chair (Mrs. Laura Albanese): We had agreed to hear from legislative research and they would brief the committee—

Mr. John Yakabuski: Yes, that's right. The committee voted as such earlier today. I understand that.

The Chair (Mrs. Laura Albanese): Yes.

Mr. John Yakabuski: That's a real concern for me, given that I need partnership in this deliberation and—well, I need tri-partnership, and if not, we'll try harder. I need all men on deck, all people on deck, all hands on deck, as they say. I wasn't being gender-specific there; I was just being general.

I'd really like to have the benefit of Mr. Clark's wisdom as we deliberate this. Without it, I think we're at a bit of a disadvantage.

The Chair (Mrs. Laura Albanese): I thank you for bringing that forward to the attention of the other members.

Are there any further comments?

Ms. Soo Wong: Call the question.

The Chair (Mrs. Laura Albanese): We'll put forward the question, and the question is: All those in favour?

Mr. John Yakabuski: We would like a recorded vote, please.

Ms. Soo Wong: Madam Chair, that is not correct.

Mr. John Yakabuski: Oh yes, it is correct. I'm asking for a recorded vote.

Ms. Soo Wong: No, we know about the recorded vote. The Chair asked to call the question. She's in the middle of asking us to vote and you are saying something else. Madam Chair, am I correct? You were asking the question.

The Chair (Mrs. Laura Albanese): We put the question. MPP Yakabuski has asked for a recorded vote. All those in favour of the motion.

Interjection.

The Chair (Mrs. Laura Albanese): I'll read the motion again just to be clear. Mr. Clark has—

Mr. John Yakabuski: No, I'm asking for a 20-minute recess before the vote. Nobody's giving me the chance. They're not turning on my microphone. Ms. Wong is trying to stop me from speaking. You've got to slow this process down a bit, Madam Chair—

Ms. Soo Wong: —slowed it for three weeks.

Mr. John Yakabuski: —at least to have a chance to reply.

Ms. Soo Wong: We already had a recess.

The Chair (Mrs. Laura Albanese): You asked for a recorded vote, and that was agreed. If you're now asking for a 20-minute recess—

Mr. John Yakabuski: I'm asking for a 20-minute recess prior to the vote.

The Chair (Mrs. Laura Albanese): —that will be granted. Okay, recessed. We're back at 3:06.

The committee recessed from 1446 to 1506.

The Chair (Mrs. Laura Albanese): Recess is over. We are now going to have a recorded vote on the main motion, as amended, moved by Mr. Clark.

Ayes

MacLaren, Yakabuski.

Nays

Berardinetti, Qaadri, Wong.

The Chair (Mrs. Laura Albanese): The motion, as amended, is lost.

Now we're back to the deliberations. We have the research officer here, Karen Hindle, who will give the committee a briefing on the research package that she presented to all the members. I will hand it over to you.

Ms. Karen Hindle: Good afternoon. The committee asked that the research service prepare an overview of how Bill 34 might impact the independence of the judiciary. Accordingly, the report addresses three separate issues. The first, starting on page 2, examines what is judicial independence, or at least how the courts have interpreted judicial independence. The second section of the report, starting on page 4, deals with the courts' approach to court security. Finally, starting on page 8, there is a table that provides an overview of the exceptions provided for judges under court-specific security legislation in the other provinces and territory. I will address each of the sections in turn.

Historically, judicial independence has been seen as an individual-judge-specific issue. So the question has been whether or not a judge has been free to make up his or her mind with respect to a particular issue. However, since the charter and repatriation of the Constitution, the courts have taken a broader view as to what constitutes judicial independence. Therefore, it's not just a question of whether or not an individual member of the judiciary has the independence, or is seen to have independence, to make conclusions and render decisions, but rather whether or not the institution of the judiciary as a whole is independent, and particularly whether or not the institution of the judiciary is independent from the other two branches of government: the legislative branch and the executive branch. The rationale behind that is that the courts are responsible for interpreting and applying the Constitution and dealing with division of powers issues, as well as rendering decisions under the charter. Therefore, the courts have decided that they need to be independent, and be seen to be independent, by the public from the other branches of government.

Now, the courts have identified what they deem to be three essential characteristics of judicial independence. These categories are not closed, but for now, these are the specific issues that the courts have identified as key to judicial independence.

The first one is security of tenure: Once a member of the judiciary is appointed, he or she has security of tenure until retirement unless he or she is removed for cause. The second is financial security, in that members of the judiciary must be paid a fair salary and that their salary must not be subject to arbitrary influence. Finally, administrative independence: Administrative independence isn't as broad as what might be seen, but rather the courts have identified minimum standards with respect to the courts managing their own dockets and managing which judges are appointed to which cases.

Secondly, the report looks at court security more specifically. In my research, we were unable to find any specific cases that deal with the legality or the constitutionality of searches, questioning or preventing the movement of judges through courthouses. Nonetheless, there have been a number of decisions that have come out dealing with various aspects of court security that we thought might be helpful to the committee in their deliberations.

The first aspect of court security is the general approach to warrantless searches in courthouses. This would deal specifically with individuals who are entering or seeking to enter the courthouse. As the committee has discussed and as witnesses have raised, under R. v. Campanella, the Ontario Court of Appeal has generally upheld the current legislative provisions with respect to the PWPA and the Police Services Act. Courthouse security is currently permitted to search any individual who enters a courthouse. However, in this particular case and in several of the cases, they do explain that typically, in the individual cases at hand, members of the judiciary and lawyers as well as members of court staff are typically given what's given to be advance security clearances. They don't themselves go through security. In R. v. Riley, the courts also identified the fact that court security isn't the sole province of security officers. Rather, the Ministry of the Attorney General, the courthouse security, the police as well as the individual trial judge may all play a role in designing general courthouse security.

The second aspect which is dealt with by the courts with respect to court security is warrantless searches of detained individuals. The courts have held, in R. v. Skinner-Withers, that the search of detained individuals is permitted under the guise that it provides for protection of not only the court participants but of the individuals who work in courthouses, including judges.

Starting at the bottom of page 6 is the section on warrantless searches of lawyers. In R. v. Stewart, the court security personnel wanted to establish an additional security measure for a particular preliminary hearing. The police had raised that there were additional security precautions that needed to be put in place. As a result, what the police proposed was that every individual who was entering that particular courtroom would be subject to an additional security screening, including the crown and the defence lawyers. The defence lawyers objected to this, and the courts held that the security clearance that had been provided to them was "a revocable privilege, not a right. It must yield to the common good."

Finally, on page 7, we deal with the jurisdiction of judges over their courtrooms. The courts have taken the position that individual judges have inherent jurisdiction to control the proceedings in their courtrooms, and that includes security. However, the courts have noted that it is not the sole province of the particular judge to decide what the security measures will be. The judges typically don't have the background or the necessary information to decide what security is required in a given circumstance. As a result, they're often encouraged to consult with the police as well as with the crown in order to determine whether or not additional security measures are required in a particular case—for example, whether or not an individual may sit with their lawyer or if they have to be placed in a detention box. However, the ultimate decision with respect to security measures in a courtroom belongs to the judge.

Finally, in the third section, there is a table which outlines the different provisions which deal with judges in court security legislation in nine provinces and one territory. While it's difficult to sum up exactly what each of these provisions does, generally, most provide for something similar to that which is proposed by section 140 of Bill 34. Some of the legislation also provides for an allowance of movement by judges in their courthouses.

The Chair (Mrs. Laura Albanese): Any questions?

Mr. John Yakabuski: A thousand, maybe.

The Chair (Mrs. Laura Albanese): I would also like to hear from the ministry legal counsel to further assist us in the deliberations, but if you have any questions—

Mr. John Yakabuski: Oh, well, listen: Let's hear from the ministry.

The Chair (Mrs. Laura Albanese): —would you rather—

Mr. John Yakabuski: No, no. The ministry is going to give us their take on that. I'd be anxious to hear that.

The Chair (Mrs. Laura Albanese): Ms. Wong?

Ms. Soo Wong: Madam Chair, I have asked the question before. I'm going to ask it again. I have a motion I spoke about earlier. I want to table it, and I want to move a motion. We already voted earlier in terms of the deliberations, so I'm going to go further to say to immediately commence clause-by-clause of Bill 34. I have a copy of the motion for the committee to vote on.

The Chair (Mrs. Laura Albanese): Okay, we'll get the copy and distribute it to the members.

Mr. John Yakabuski: Madam Chair?

The Chair (Mrs. Laura Albanese): Yes?

Mr. John Yakabuski: We passed a motion this morning to begin the deliberations, in public, on the report prepared by Ms. Hindle.

The Chair (Mrs. Laura Albanese): Yes.

Mr. John Yakabuski: What Ms. Wong is saying is basically throwing out the decision of the committee in order to fast-track it. There are a lot of questions. The benefit of having Ms. Hindle here—and there are other ministry staff here; am I correct, Madam Chair?

The Chair (Mrs. Laura Albanese): Correct.

Mr. John Yakabuski: That is the opportune time. Because the committee has decided we're going to do this in a public forum, I would think we would be remiss not to have the opportunity to actually go through this paper and have our questions answered. Just because someone read it—I think it's an assumption to conclude that everyone understands it perfectly in legal terms and how it may affect the independence of the judiciary. I don't believe there was a time limit placed on this deliberation process.

Quite frankly, it is insulting to this committee to have that motion passed this morning and then simply have Ms. Hindle give a brief synopsis of what's in the report and consider that to be deliberation. I don't think that's the way this body is supposed to work. That is not what we decided on this morning. I'm sure my colleague would agree that we expected to be deliberating this. Am I speaking loudly and clearly enough? Because I know that Hansard was concerned that it may not be loudly and clearly enough for some people.

The Chair (Mrs. Laura Albanese): It wasn't Hansard; the concern was from a committee member.

Mr. John Yakabuski: One of the members. Okay.

To make that abundantly clear, we passed a motion this morning to deliberate. I think that should be respected.

The Chair (Mrs. Laura Albanese): I appreciate your comments, but we now have another motion on the floor that has been moved and it's in order. I am told by the clerk that it is in order. It is a debatable motion, a valid motion, that is on the floor and that has been moved by Ms. Wong.

Further debate on this motion?

Mr. Jack MacLaren: May I say something?

The Chair (Mrs. Laura Albanese): MPP MacLaren.

Mr. Jack MacLaren: I too think Ms. Hindle has prepared a very interesting paper, and I have read it. I think we have not had deliberation. We've had this document—which is a very interesting document—presented but not deliberated or debated or discussed or questioned. If we have other people from the ministry who are going to make presentations to us here, I think we'd be remiss in not hearing that. We want to do the best job we can to make sure, when the day is done on Bill 34, that we've been complete. I think this would interfere with our ability to be complete in our study, of doing things correctly and properly.

The Chair (Mrs. Laura Albanese): I appreciate your comments, MPP MacLaren. However, the motion is valid and it is in order, and therefore we are debating that motion. MPP Yakabuski.

Mr. John Yakabuski: Just so I have this clear, Madam Chair, and perhaps the clerk can give us some help on this: There's a motion before the committee now and we are debating it. There is an allotted time for each member to debate on the motion, is there not?

The Clerk of the Committee (Mr. William Short): Yes, you can debate it for as long as you want. After 20 minutes, you have to give up the floor to see if another member is interested in speaking.

Mr. John Yakabuski: Okay, so you can have the floor for 20 minutes at a time—

The Clerk of the Committee (Mr. William Short): Up to 20 minutes at a time, yes.

Mr. John Yakabuski: —all by yourself.

The Clerk of the Committee (Mr. William Short): Correct.

Mr. John Yakabuski: Thank you very much. So, I have the floor right now.

The Chair (Mrs. Laura Albanese): You do.

Mr. John Yakabuski: This issue of deliberation—I mean, I can start right in the very first part of it here, Madam Chair, with respect to the security of tenure of the judiciary. It's a very significant issue. As Ms. Hindle said, if they have security of tenure, they cannot be removed—I don't have the clause in front of me—except by retirement or to be removed with cause.

If she could define for me—I mean, these things are very important. What would constitute cause to remove a member of the judiciary? And also, if she could provide this committee with a glossary of, historically, members of the judiciary who have been removed with cause, and what that cause was, so that we have a better understanding. Right now, we don't know exactly how this affects the independence of the judiciary until we have the whole picture. And if the—

The Chair (Mrs. Laura Albanese): I don't mean to interrupt you. I just want to kindly remind you that we are discussing the motion that is now on the floor and that reads that the committee cease further deliberation of the issue and immediately commence clause-by-clause consideration of Bill 34.

Mr. John Yakabuski: Okay. Well, I would like to propose an amendment to that motion.

The Chair (Mrs. Laura Albanese): Go ahead.

Mr. John Yakabuski: That until the committee has had a complete and full deliberation, analysis and examination of the report presented by Ms. Hindle, research officer, that we do not proceed until such time—or add that in, if you can word it properly, according to legislative rules—that until we have a complete analysis, examination and deliberation on Ms. Hindle's report, that we not proceed until that has been completed, because that, quite frankly—

Mr. Shafiq Qaadri: That can't be in order, Madam Chair.

The Chair (Mrs. Laura Albanese): The amendment will be needed in writing.

Mr. John Yakabuski: Okay. We have it here:

"Once the committee has heard from ministry counsel on the independence of the judiciary, and had the opportunity to question both ministry counsel and legislative research, and is duly satisfied that Bill 34 does not threaten this independence."

The Chair (Mrs. Laura Albanese): We're going to take a five-minute recess to deal with the amendment.

The committee recessed from 1524 to 1541.

The Chair (Mrs. Laura Albanese): We're back in business. We now have an amendment to the main motion moved by Ms. Wong—the amendment was moved by Mr. Yakabuski. Everyone has a copy, and we're now debating the amendment.

Mr. Lorenzo Berardinetti: Can you please read it into the record?

The Chair (Mrs. Laura Albanese): I can read the motion into the record: Mr. Yakabuski moved that once the committee has heard from ministry counsel on the independence of the judiciary and had the opportunity to question both ministry counsel and legislative research and is duly satisfied that Bill 34 does not threaten this independence.

1540

Mr. Lorenzo Berardinetti: Recorded vote.

The Chair (Mrs. Laura Albanese): We're still debating. Any comments?

Mr. Shafiq Qaadri: It's not a sentence; it's just a bunch of succeeding clauses.

Mr. Lorenzo Berardinetti: I know it's not a sentence.

The Chair (Mrs. Laura Albanese): It's not a sentence, because it adds on to the main motion. Do you want me to read the main motion?

Mr. Shafiq Qaadri: No, that's fine. Go ahead.

The Chair (Mrs. Laura Albanese): Any further comments before we proceed to vote on this amendment?

Mr. John Yakabuski: There will definitely be further comments. Now, this is the motion before the committee, and it does deal with the report. That's why I have these concerns, Madam Chair. The security of tenure—I mean, this is something that could literally explode on us if we haven't properly investigated the history of this.

I was talking about a glossary. You know, since we've had a Constitution, at the very least, and perhaps even going back beyond that, we need to know what members of the judiciary have been severed for cause or dismissed for cause, what that cause was and what the outcomes have been, whether they're challengeable or whatever, whether they've had to go to Parliament to clarify that or confirm it, what body has the right to actually make that decision. Obviously, somebody is the boss even of the judiciary. They can be dismissed for cause but, of course, only for cause. This is part of protecting the independence of the judiciary, which was the whole point of Mr. Hillier's motion that was tabled here a couple of weeks ago.

We're only talking about one issue in this report at this point: the security of tenure and how important that is for a member of the judiciary to have the comfort, to have the confidence of knowing that their decisions are not subject to the whim of some other body—is it Parliament, is it the Legislature, is it some society, is it somebody coming from God knows where? Who has the right to make this decision with regard to security of tenure of the judiciary and whether or not they are guilty of such a breach that would cause them to be dismissed with cause?

The whole thing rests on a proper understanding of what the ramifications of that could be. When we're talking about Bill 34, a replacement of the Public Works Protection Act with respect to court security, I certainly am going to be looking for some kind of explanation. Look at some of the territories—Newfoundland and Labrador—the differences in the different jurisdictions and how that might impact us here in Ontario.

The government has talked about how they want to get this right, and I heard the minister say in her remarks in the House that they want to get this right. We've heard this several times from different speakers from the government side as this was going through second reading debate in the Legislature. I'm quite frankly pleased that Mr. Hillier was able to raise this issue, and the fact that he raised it has opened up all kinds of new doors. You know, Madam Chair, how sometimes when you ask a question what you get is more questions rather than answers? This has posed a real dilemma for us on this side of the committee. How do we proceed without knowing what actually can trigger that act on the part of whomever? I don't even have an explanation here of who can actually start that process, get that ball rolling so to speak, where, okay, we have now decided we have to censure a judge, dismiss a judge. Who makes that call and under what circumstance could it happen? It says, "with cause." I know I did see that here and I'm very thankful.

"Security of tenure: Once appointed, judges must be permitted to remain on the bench until retirement, unless they are removed for good cause. Their tenure must not otherwise be subject to interference."

That is a very, very broad swath that they have been given the right to cut. Somebody, under some circumstance, some body—I say somebody or some body—under certain circumstances can actually say, "You're being terminated, dismissed"—whatever—"with good cause" or "with cause." If we're going to proceed and ensure that this piece of legislation is one that protects the security of our court places but also has done that in the full knowledge of the impact it may have on the independence of the judiciary, then I think we need a greater explanation.

My position would be—not only to Ms. Hindle, who has done a great job of doing this research, but I'm sure, in the limited circumstances and the limited direction that she had, she could not possibly have anticipated what questions may have arisen out of her report. But as a result of her report, it is actually giving cause for further questions. That's question one: the independence of the judiciary with respect to the ability of somebody to dismiss them with cause.

That's just number one as we go through this report. That's why the point I'm making is, how do we move on beyond this without the ability of each and every member of this committee—certainly the members on this side, because we're the ones who asked for it in the first place. The motion just a couple of weeks ago by Mr. Hillier from Lanark–Frontenac–Lennox and Addington is what

precipitated this report. It would be remiss on our part if we didn't ask all of the relevant questions that this report has raised within our own thought process. That is why I'm looking at this report and saying, "Wow."

After hearing from Ms. Hindle and listening to the motion this morning, which—while I may not have been completely happy with the motion, I always accept the will of the committee. The committee is like a small portion of the Legislature. I always respect the will of the committee. Why this current government does not respect the will of the Legislature is quite another question indeed.

The crux of the matter sometimes is that when we make a decision in this committee, whether we move on, whether we wait, whether we stop, whether we go backwards, it's the will of the committee, and we all respect that will of the committee, or at least I think we should. I, certainly, as a subbed-in member—I'm not a member of the committee, actually, Madam Chair. I'm the critic for community safety, and that's why I've been subbed in onto this committee. Once the committee makes a decision, I think we should abide by it and respect its will.

The motion that was proposed this morning was that we deliberate in this public forum the report that was tabled by Ms. Hindle from the Legislative Research Service, and I thank her for the work that she has done on that.

1550

Again, to emphasize the gravity we're dealing with here, only one part—three words, "security of tenure"—has conjured up all kinds of permutations about what influence any other body has on this court so there is a possibility of someone ending the tenure of that judge. That possibility exists. We need to know the circumstances under which that could happen, so that we are comfortable that anything that is being empowered by this act, if passed—whether we can stop it or not, I don't know; I'm not a legal expert. But at least we'd be absolutely crystal clear and fully aware of what the ramifications of the passage of Bill 34 would be. So, from my perspective, that is something we simply cannot move beyond until such time as we have that undertaking by legislative research and ministry officials as well, because quite frankly, Madam Chair, the ministry staff are the ones who put together the bill with the help of legislative research. They do all that background work.

We have to have that opportunity maybe to just understand where they were coming from at the time and put it into the perspective of the independence of the judiciary—into that little silo, if you want to call it—to see how, when the bill was devised or conceived and written, if they even considered that this kind of situation could crop up. When a member of the Legislature, my colleague Mr. Hillier from Lanark–Frontenac–Lennox and Addington, brought forth this motion, did the ministry even envision that that could possibly happen? If they did, perhaps they're prepared to help us through this—make comment themselves—and if not, perhaps they need some time to understand with clarity themselves about the door we're opening here and whether or not this report, in and of itself, actually solves anything, or does it just open that door and in there, now, you see door number one and door number two and door number three, and which one is it going to be?

It's not Let's Make a Deal because, as the minister said, at the end of the day we've got to do this right. So it's not a choice of, "Okay, let's take a chance here and go with door number two because it's right in the middle." It may be the wrong one. It may be full of snakes and whatever.

Of course, I'm only one person, and I obviously need to have the consent of the committee. But I, for one, don't know how we could, in good conscience, proceed without getting a good, complete analytical—my God, it's so worrisome that it's actually confusing sometimes, Madam Chair, but we certainly have to have that complete analysis of this report in order that we can have an absolutely crystal-clear understanding of the decisions we make today and how they will impact those people who are among the most trusted and revered and powerful people in our society, those men and women of the judiciary. We place a great deal of responsibility on their shoulders. The decisions that they make have far-reaching ramifications that can be felt for generations. So to move beyond this without having the opportunity to be assured of how that independence could be affected by this bill I think would be cavalier, to say the least, and outright irresponsible, to put it in stronger terms, Madam Chair.

That's just one. Can I move on to the next one?

The Chair (Mrs. Laura Albanese): You still have about five minutes, if you wish.

Mr. John Yakabuski: Five minutes? Do I not have 20 minutes for each one of my questions?

The Chair (Mrs. Laura Albanese): No, you have 20 minutes to speak at any one time. You've been speaking for 15, roughly, so that would leave another five.

Mr. John Yakabuski: Oh, I thought I had 20 minutes for every question, Madam Speaker, and I haven't even actually posed the question yet. So I have used 15 of my 20?

The Chair (Mrs. Laura Albanese): Yes, you have.

Mr. John Yakabuski: I have used 15 of my 20. My goodness, how time flies, eh?

The Chair (Mrs. Laura Albanese): It does.

Mr. John Yakabuski: Goodness gracious. You probably don't feel so on the other side, I'm sure.

Ms. Soo Wong: We're watching the clock.

Mr. John Yakabuski: Watching the clock. You know, those hands never move when you've got your eyes on them, Soo.

I look at another part of this paper and it says that this paper has been prepared to assist members in their deliberations on the bill. There's no question; I can categorically state, without any reservation, that it does accomplish that. It has been prepared to assist members in their deliberations on the bill, but the paper, of itself, does not answer the questions. The paper gives a very

good synopsis to the questions that our researcher may have surmised were being part of the original motion, but it was pretty broad and pretty general and somewhat vague, I may say, Madam Chair.

The Chair (Mrs. Laura Albanese): The motion?

Mr. John Yakabuski: The original motion passed by Mr. Hillier was—you know, until we have the chance to deliberate on the bill. But it didn't give the Legislative Research Service a whole lot of detail about what we were specifically looking for—just, you know, deliberations on the effect on the independence of the judiciary.

By having those qualified people here, and ministry staff here as well, this is an opportunity, then, to delve into it a little deeper and get those answers; otherwise, do we have a motion at some point looking for more information because of questions posed by the issues raised in the report? Or do we have the opportunity, then, to actually have a discussion with the members of legislative research staff and also ministry staff who would have been quite involved in the drafting of this legislation prior to it being brought before the House?

Why would we squander that resource when it is at our hands today? I would certainly wonder why we would not take full advantage of the opportunity to have that discourse with them while they're here and available. Just like we couldn't predict with absolute certainty as to whether Mr. Clark could be here next Thursday or any other member of the Legislature, we can't predict with certainty that any particular member of the Legislative Research Service could be here next Thursday, or any member of ministry staff. Things happen in life. Boy, I'd hate to leave here today and not have had the opportunity, to the fullest extent possible, to run those questions by the people who are kindly at our disposal today. So that's kind of the crux of it.

1600

Now, could I say that there's any humanly possible way that we could get through this deliberation today? Highly unlikely, Madam Chair. I mean, if you look at the content of this report and the scope of it and the breadth of it, we're dealing with other jurisdictions across the country, including provinces and territories, Northwest Territories. My brother lives in the Northwest Territories. He'd be interested in hearing some of the similarities and differences, and my gosh, that's a long section for the Northwest Territories too. He'd be interested in hearing that. My daughter just came home from Newfoundland. They've got a quite extensive section there. It would be certainly worthwhile—

The Chair (Mrs. Laura Albanese): MPP Yakabuski, I know you wish to elaborate on these very succinct points that you've made, but your 20 minutes are up. Therefore, I would ask if there are any further comments to be made. I know that Mr. Berardinetti had signalled before. I don't know if he wishes to speak still. Otherwise, I'll go to MPP MacLaren.

Mr. Lorenzo Berardinetti: I just wanted to congratulate Mr. Yakabuski for his behaviour today and the supercilious diatribe that has completely discombobulated my brain. Congratulations on that. Those are my comments. Thank you.

The Chair (Mrs. Laura Albanese): Thank you. MPP MacLaren.

Mr. John Yakabuski: I think that was quite insulting. Don't you, Madam Chair?

The Chair (Mrs. Laura Albanese): It's a compliment, I believe. I didn't take it as insulting, but—

Interjection.

The Chair (Mrs. Laura Albanese): Okay. MPP MacLaren has the floor.

Interjection.

The Chair (Mrs. Laura Albanese): Please proceed.

Mr. Jack MacLaren: Madam Chair, I share Mr. Yakabuski's concerns. I think, if we go back to what Mr. Hillier wrote in his original motion—we want to deliberate on whether this legislation breaches the independence of the judiciary, which is the question that we've been working on for two weeks or so now. And then we have this report by Ms. Hindle, Bill 34 and the Independence of Judiciary, which I find very interesting, and I spent a good part of the evening last night reading it. I didn't go to sleep; I found it very interesting.

And I find Bill 34 a very interesting piece of legislation, because when I was first part of this committee and I saw Bill 34 and hydro plants—the three things stuck together—I thought, "Well, this doesn't look very interesting," until I started to read into it. I see that we're talking about our constitutional rights to freedoms and all the things in the charter of rights and everything that's given to us by the Constitution of Canada. And I thought of what happened two years ago in Toronto with the G20, and how there was an abuse through this original bill.

Interjection.

Mr. Jack MacLaren: Now you've distracted me, John. So—now, where was I, there?—our constitutional rights and freedoms, and that's something that is very dear to my heart. We have a Constitution, we have a democracy, and we have certain rights and freedoms that our forefathers fought for.

The original piece of legislation, which is called the Public Works Protection Act, was in 1939, the Second World War, so it was meant to provide wartime security. Unfortunately, that was abused by the Toronto police in Toronto two years ago, and that's why we're all here today, as a result of the McMurtry report. This legislation is intended to correct a wrong, and I think that there certainly was a wrong, an abuse of the law and our constitutional rights two years ago in Toronto.

It's so easy to lose what has been worked for so hard and fought for and won, which is our rights, our democracy and the foundation of everything that's good about the western democracy. It goes all the way back to the Magna Carta, which is the basis of everything good and democratic and why we're here at Queen's Park.

So I found it very interesting, things like that Bill 34, in courtrooms, was going to ask us for our names—and I'll read your document, Ms. Hindle, here, because you hit the nail right on the head: "Under Bill 34, a new

section 138 ... would confer discretion upon authorized personnel to require individuals entering or seeking to enter a courtroom to produce identification, information"—in other words, why you're there—"and/or submit to a search," which could be whatever, including a search of your car, perhaps a body search.

All of these things could be taken to the extreme and could be a huge infringement on our constitutional rights as individuals, and then when we realize that the trial and the courtroom are intended to be a public process—the trial itself is a public exhibit of justice, and that justice must not only be done, but, to read your words again, Ms. Hindle, "In doing so, all courts must operate (and be seen to operate) independently from the influence of executive and legislative branches of government." So justice must not only be done but be seen to be done and must not be influenced by the executive and legislative branches of government. That really is us and what we're doing here. We're the legislative side of that. So we must be very careful.

We heard many deputations come and speak to us. They were all good deputations, I thought, very much divided along the lines of police and lawyers. Sometimes in the past I was a fan of neither, but I found that in this case the police were basically seeking more police powers which in my view were threatening our constitutional rights and our freedoms, and the lawyers were speaking for more freedoms, especially the Canadian civil rights association, which is an organization that I think is wonderful. I applauded the words they spoke and I was glad to see them here.

I think we have to be conscious of the fact that these rights can easily be taken away from us, and as a legislative body or group this could have an influence on judicial independence. So the judge who's supposed to have control over courtroom security, amongst other things—if we legislate more and more regulation which I would suggest could be the taking away of our constitutional rights into law, we could be taking away from a judge's right to oversee security in a courtroom, which he currently has. So I think we have to be very, very careful about that.

On page 2 of your document, Ms. Hindle, you talk about judicial independence. You say, "Historically, judicial independence referred solely to the principle that individual judges must be able to adjudicate disputes and render decisions, free from influence or interference from an 'outsider—be it government, [a] pressure group, [an] individual or even another judge.'" Of course, "government" would be us—well, us.

So we have to be very careful and cognizant of the fact that we could have that influence as we do more of interfering with the independence of the judiciary, and we have to be, I think, doubly careful of that. That's why I think your report, Ms. Hindle, is so important, because you've highlighted and identified all the good things of Constitution, democracy, Supreme Court decisions, etc., and you have all the footnotes to prove it, which I didn't read, all those documents. I could go and get those, and maybe we should make a motion to read all those, but that might take another meeting and I'll leave that to Mr. Yakabuski. He's very good at that kind of thing.

"The Supreme Court of Canada has held"—I'll read here—"that judicial independence is a 'foundational principle' of the Constitution and derives from three main sources. First, judicial independence is mandated" by the charter, "(which guarantees accuseds 'a fair and public hearing by an independent and impartial tribunal')."

So there we have the word "public," which again is instituting and telling us that a courtroom is a public place and it should be free and open and inviting to the public to come, and the trial which is administered by the judge is a public event; the public is invited and welcome to attend and nothing we should do should interfere or discourage the wishes of the public to attend.

Then we have our Constitution Act of 1867, which again talks to appointment tenure, which John talked about.

"Third, the Supreme Court has held that judicial independence is an 'unwritten' norm or principle, 'recognized and affirmed in the preamble to the Constitution Act, 1867.'"

1610

So, again, we must think back and think about how sensitive and how delicate a democracy and our constitutional rights are and how easy it is, thinking we're doing something good as we create more legislation and regulations—it could be called red tape. Always, always, they take away rights from us as government comes in with laws and regulations.

We are a free country. We have a charter. We have a Constitution that defines that we are free men. Unfortunately, sometimes we are tempted to write laws and regulations, thinking we're doing something good when in fact we take people's rights away, and that is actually a very bad thing. Throughout history, we've seen countries fail as they fight for freedom, achieve freedom and then become a little bit lazy and gradually legislate and regulate themselves out of the business of a free society and a democratic society.

It would be wonderful to hear the ministry counsel speak today, because we haven't had a chance to hear that. We have had a chance to read your documents, Ms. Hindle, and an attempt is being made here to go through them in some detail. I'm afraid we won't be able to do them justice, because we are limited in time, but we can each speak to it. We even have the motion that says it's time to stop talking about what you wrote about. I think that's just a crying shame, because I don't think I've ever had enough talk about our constitutional rights and freedoms and our democracy and the roots of what made this country great. Whenever that happens, I think it would be a sad day for Canada.

We go on, as we see here in the Constitution: "recognized and affirmed by the preamble to the Constitution Act, 1867." I did mention that earlier, and I just mention that again, because I think that's fundamentally important to what we're doing here.

We can get into warrantless entry or warrantless searches, which I think are a terrible thing. I disagree with those entirely. I think this piece of legislation has a few things wrong with it, like asking who you are or showing ID and not defining what a search should be, and we'll get to that a little bit later. But those are also all potentially infringing on a judge's right to control the environment in the courtroom and security in the courtroom, as well as, and even more importantly, the right of free Canadians to have these things imposed upon them, which I really have a big problem with, and I resent that terribly.

I think that police, meaning well as policemen, believe that more policing is better. Unfortunately, it's up to us as lawmakers to rein that in and make sure that doesn't happen. Excesses of anything cannot be good, and I think we had a little taste of policing getting a little carried away two years ago with the G20. We saw the effects of that. People were literally picked up and put in jail for a night without a warrant, and actually, as we found out later, without good reason, and it didn't even conform to the law at the time because the law applied to the other side of the fence, not this side. That was a very wrongful thing. Most of us think those kinds of things can only happen in Third World countries, and it happened here. So I would say, how far are we from being a Third World country?

Again, this just means we have to be doubly careful about what we say and do here in this wonderful institution, the Legislature of Ontario. I think that although it's such a small and minor thing in the big picture of governing the province of Ontario—security in a courtroom in this Bill 34—basically, it's the principle involved, the principle of freedom, the principle of democracy, the principle of the independence of a judge, which could be the highest job in the land other than the Prime Minister or perhaps the Premier. Any time we start to tamper with and interfere with the rights of these people to be independent and free-thinking and do what is democratically right and protect our constitutional rights and our freedoms that we fought for over the centuries, we are at a point where we are dangerously near to making a mistake and giving away everything that was so hard-fought-for.

I think at this point in time I might take a little break, because I'm sure John might have one more word to say.

Interjection.

Mr. Jack MacLaren: More than one word? Thank you, Chair.

The Chair (Mrs. Laura Albanese): Further debate?

Mr. John Yakabuski: I would certainly allow others to—

The Chair (Mrs. Laura Albanese): I thought Ms. Wong had her hand up.

Ms. Soo Wong: Madam Chair, it's been brought to my attention that the ministry counsel has left because he was here until 4. So the other question I want to ask is: Are we going to be voting on Mr. Yakabuski's amendment to my motion, and when will that be done? We have heard 20 minutes; I think Mr. MacLaren about 15. I don't know if my colleague from the NDP wants to have any comments. I just wanted to move along with these amendments. If we're going to vote on them, I can tell the staff—

The Chair (Mrs. Laura Albanese): That's why I'm asking if there are further comments—

Ms. Soo Wong: —so people know that the counsel is not here.

The Chair (Mrs. Laura Albanese): —and if there are not, we can proceed to consider the amendment that Mr. Yakabuski has moved.

Any further comments?

Mr. John Yakabuski: Yes, I would certainly love to comment further. One thing I would like to say, Madam Chair, is that we're, at some point very soon, going to be—

The Chair (Mrs. Laura Albanese): And if I may clarify, we will have to recess really quickly when the bells ring, because we will only have five minutes—

Mr. John Yakabuski: Well, we don't even have—

The Chair (Mrs. Laura Albanese): We'll have five minutes to go up.

Mr. John Yakabuski: But that's only if there's a recorded vote.

The Chair (Mrs. Laura Albanese): Yes, and that's all we recess for.

Mr. John Yakabuski: Pardon me?

The Chair (Mrs. Laura Albanese): That's all we recess for, a recorded vote.

The Clerk of the Committee (Mr. William Short): You only recess for a recorded vote. When the bells are ringing, that's when the committee recesses.

Mr. John Yakabuski: We only recess for a recorded vote.

The Clerk of the Committee (Mr. William Short): In the House.

Mr. John Yakabuski: So we don't have the opportunity as members of the Legislature to go in and vote on any of these bills unless they are recorded votes?

The Clerk of the Committee (Mr. William Short): You can leave the committee, but—

Mr. John Yakabuski: I know, but then we would—if we're not at the committee, the committee could do whatever they want in our absence.

The Chair (Mrs. Laura Albanese): When the bells are ringing, that's when we recess.

Mr. John Yakabuski: Okay. So we'll only be recessing, then, if there is a recorded vote?

The Chair (Mrs. Laura Albanese): Correct.

Mr. John Yakabuski: Okay. Well, that clarifies it, and as I said earlier, I abide by the will of the committee.

The Chair (Mrs. Laura Albanese): I think those are the rules, the standing orders.

Mr. John Yakabuski: Yes—oh, they are part of the standing orders? Well, I certainly abide by them. Mr. Levac, the Speaker, would certainly concur with that.

My colleague Mr. MacLaren has raised again a whole set of other questions that arise out of the receipt of this

information on the part of legislative research. I don't have the answers for Mr. MacLaren as to his concerns that have been raised as a result of this information that we've received.

So it goes back to my point—and I know Ms. Wong just wants to get on with it, but is that the way we should be doing things? I can't sit here and say, "Let's just move along because the Liberal parliamentary assistant to the minister wants us to do so."

There are 13 million Ontarians who expect us to do our job here. They expect us to properly dissect legislation and make sure that when we're doing it, we're doing it right. In fact, your minister said so herself in the House, that we've got to get it right.

You'd think you'd want to do it exactly right, and we're even getting all more kinds of concerns raised by various groups, individuals, stakeholders, otherwise—even after the deputations were received here a few weeks back. We now have even further communications about concerns with the bill. Is it not in our best interests, in the best interests of Ontario's 13-million-and-some-odd people, to get it right?

There's a saying in carpentry: "Measure twice, cut once." So let's not be too hasty here, I say to my colleague on the other side, but certainly a colleague on this committee, Ms. Wong. I think we need to measure twice, and, if necessary, we'll measure a third time, but before we cut, we'll be sure that we've got that pencil mark in the right spot, as they say.

I don't know why the resistance on the part of the government. We're going on about this. Why don't we just start talking to the legislative counsel, to the legislative research, to the ministry staff, and start talking about the issues that we've got in this report? Because the reality is that until we do, there are questions that will remain unanswered.

Do you want to have another problem a few years down the road? You remember what happened back in 2010—I know you weren't a member of the Legislature then, but you would certainly be familiar; you don't live far away from downtown Toronto—when the public security minister at the time, behind closed doors, unbeknownst to the members of the public, invoked the Public Works Protection Act to act as their security hammer for the G20. We all know the fallout from that.

André Marin, a very, very capable Ombudsman, was tasked to complete a report on that event and the government's role. He didn't title it A Review of the G20 in Toronto. He didn't title it What Happened at the G20. He didn't title it We Can Do Better. He didn't title it Some Things Went Wrong. He titled it Caught in the Act—caught in the act. It was a scathing indictment of the government and how they managed security issues here in the province of Ontario—a scathing indictment. There was literally page after page that ripped apart the excuses that the government gave and the lame explanations in the aftermath. I should get a copy of that, and I could read you some of those passages. It would be an opportunity for you to have some sober second thought about what you're asking to do here, Ms. Wong. You're asking to just gloss over, move on. That's what happened in 2010, when, you recall—it was Minister Rick Bartolucci at the time. He basically got a significant demotion. That was—

The Chair (Mrs. Laura Albanese): Pardon me, MPP Yakabuski. We'll have to go upstairs and proceed to vote. We'll recess until after the vote.

The committee recessed from 1624 to 1641.

The Chair (Mrs. Laura Albanese): We can resume, and we'll have to stop for another vote that is coming up in 28 minutes.

Mr. Yakabuski, you had the floor. MPP Yakabuski.

Mr. John Yakabuski: Oh, yes. Pardon me.

The Chair (Mrs. Laura Albanese): Do you wish to continue?

Mr. John Yakabuski: Yes. We don't have to vote on that, right?

The Chair (Mrs. Laura Albanese): No, we don't.

Mr. John Yakabuski: That's good. There was doubt as whether I could win that vote. Where was I, Madam Chair?

Mr. Shafiq Qaadri: I believe your daughter just returned from Newfoundland.

Mr. John Yakabuski: Oh, gosh, no. That was earlier. But that's always a good starting point, I would say to the member from—Etobicoke Centre, is it?

Mr. Shafiq Qaadri: Etobicoke North.

Mr. John Yakabuski: Etobicoke North. It's never a bad place to start when you talk about your daughter. Emily just got back. I'm going to be seeing her tomorrow. She just got back from Newfoundland. Tomorrow, we're actually going to see our newest granddaughter. That's going to be an exciting time. I'm going to do a couple of meetings in the morning and then get going. But yeah, well of course, that's another issue altogether. Thank you very much, I say the member for Etobicoke North.

The issue of the differences and how the court security and independence of the judiciary is addressed in various jurisdictions is quite mind-boggling in some ways. I mean, we have some very short passages in some; for example, in New Brunswick, under their Court Security Act, it simply says in section 8—Klinger would be interested in hearing that—"Nothing in this act derogates from or is intended to replace the power of a judge, whether established by common law or otherwise, to control court proceedings or of a person charged with carrying out the orders of the judge."

Yet, when you go to Newfoundland, it is basically two full pages here. Their Court Security Act—and that was one that was updated in 2010, or maybe even only written in 2010. The Court Security Act, 2010, talks about security officers as well:

"8(1) A security officer shall evict a person from a court area or restricted zone where directed to do so by a judge and may use reasonable force to do so.

"8(2) Unless otherwise directed by a judge, a security officer may evict a person for causing a disturbance in a

court area or restricted zone and may use reasonable force to do so.

"9(1) This act shall not be considered to derogate from or replace the power of a judge under common law or otherwise to control the proceedings of the court.

"9(2) This act shall not be considered to affect the right of a judge to have unimpeded access to a court area or a part of a court area.

In another section, entitled "Court Areas and Restricted Zones Regulation":

"6(1) Only the following persons may enter a restricted zone:

"(a) a judge or court employees;

"(b) a security officer; and

"(c) another person authorized by a judge or security officer under the authority of section 4 of the act."

It's a lot more complicated when you're talking about the Newfoundland act.

"6(2) Notwithstanding paragraphs (1)(b) and (c),

"(a) a security officer shall not enter a judge's chambers unless that security officer is authorized to do so by a judge; and

"(b) a security officer shall not authorize a person to enter a judge's chambers."

That would seem fairly clear, but it wouldn't hurt to get an interpretation from Ms. Hindle, who I understand is a lawyer herself and would obviously be far better at interpreting those sections than myself, who is not a lawyer.

"6(3) Subsection (2) shall not apply where a security officer reasonably believes an emergency exists in a judge's chambers, and a security officer or another person authorized by a security officer may enter a judge's chambers for the purpose of responding to the emergency.

"7. Nothing in these regulations derogates from or replaces

"(a) the power of a judge at common law or otherwise to control the proceedings of the court;

"(b) the power of a judge to give directions to a security officer incidental to the exercise of a contempt power;

"(c) the right of the chief judge or a judge in the exercise of judicial functions; or

"(d) the administrative power of the chief judge to direct and control the precincts of a courthouse."

In another section headed, "Court Security Regulations":

"6. Nothing in these regulations derogates from or replaces

"(a) the power of a judge at common law or otherwise to control the proceedings of the court;

"(b) the power of a judge to give directions to a security officer incidental to the exercise of a contempt power;

"(c) the right of the chief judge or a judge in the exercise of judicial functions; or

"(d) the administrative power of the chief judge to direct and control the precincts of a courthouse."

That is just the section in Newfoundland.

Section 140, I believe, in Ontario—I have to get a copy of the bill handy here. Am I correct? The section in our bill, Bill 34, is it 140, that nothing derogates—

Ms. Karen Hindle: Yes, it is.

Mr. John Yakabuski: Section 140.

Ms. Teresa J. Armstrong: There you go.

Mr. John Yakabuski: Thank you very much to my colleague from London–Fanshawe.

Ms. Teresa J. Armstrong: It will speed the process.

Mr. John Yakabuski: Oh, let's not get too hasty.

"140(1) Nothing in this part derogates from or replaces the power of a judge or judicial officer to control court proceedings....

"(2) Nothing in this part derogates from or replaces any powers that a person authorized by a board or by the commissioner as described in subsection 138(1) otherwise has under the law."

In order to fully understand that, of course, you'd have to go to 138(1), which is, "A person who is authorized by a board to act in relation to the board's responsibilities under subsection 137(1) or who is authorized by the commissioner to act in relation to the Ontario Provincial Police's responsibilities under subsection 137(2) may exercise the following powers if it is reasonable to do so for the purpose of fulfilling those responsibilities...."

We don't have section 137 here, so we don't have that act here.

It gives you some indication, though, Madam Chair—oh, I'm sorry; I have those tied up there.

Ms. Teresa J. Armstrong: I'll get it.

1650

Mr. John Yakabuski: Thank you very much, because we don't want to lose any of our time here.

It gives you some idea of the nuances, depending upon which jurisdiction we're talking about, perhaps some of the complexities that some people may see that as. Again, it just behooves us to take the time, to ask the questions of the staff here today, the ministry staff and also of the legislative research experts here today, so that we could go through this on a point-by-point basis, getting a better understanding so that, as I said before we went to vote on the private member's bill—I believe that was Bill 73 tabled by Ms. Scott, the member for Haliburton–Kawartha Lakes–Brock, with respect to some amendments to the Endangered Species Act. Interestingly enough, the government lost that vote.

I wonder, Madam Chair, if they will respect the will of the Legislature on that vote that took place today, because it's interesting: Earlier this year, there was a motion—I believe it was by Mr. Vanthof from Timiskaming–Cochrane, if my memory serves me correctly—that would have removed the harmonized sales tax, or at least the provincial portion of the harmonized sales tax, from home heating.

Ms. Teresa J. Armstrong: No, you stand to be corrected.

Mr. John Yakabuski: I stand to be corrected?

Ms. Teresa J. Armstrong: Mr. Mantha.

Mr. John Yakabuski: It was Mr. Mantha from Algoma–Manitoulin; a correction, and I'm always glad to be corrected by a fellow grandparent. So I say thank you to Ms. Armstrong from London–Fanshawe. It was Michael Mantha from Algoma–Manitoulin who tabled that motion, and to my best recollection since then, the government has not acted and has not respected the will of the Legislature.

That brings me back to today's vote: Will they respect the will of the Legislature when it comes to Bill 73, tabled by Ms. Scott today? An interesting question—it remains to be answered. It has been referred to the committee on social policy, and we'll follow that closely.

But it brings me to my bigger point: why the government refuses to respect the will of the Legislature when it comes to the motion that was passed by this Legislature several weeks back, moved by Mr. Klees, that a select committee be established to investigate the, I almost say tragic, scandal at Ornge—

The Chair (Mrs. Laura Albanese): Pardon, Mr. Yakabuski. We have reached the 20 minutes again, and therefore I have to interrupt you and ask if there are any further comments. Mr. Berardinetti.

Mr. Jack MacLaren: I'd like to say a few words.

The Chair (Mrs. Laura Albanese): He's the first one.

Mr. Lorenzo Berardinetti: I'm going to speak a little bit to this, but with respect to all the members that are present here today, I've been listening to what Mr. Yakabuski has been saying and I think the point is being made quite simply that—

The Chair (Mrs. Laura Albanese): Could you please speak up a little more?

Mr. Lorenzo Berardinetti: Absolutely. Could I use this microphone instead? Thank you. I'll have to lean into the mike.

I appreciate what the comments are, but I think all of us around the table know what's going on, and I'm not casting judgment on it. I think Mr. Yakabuski wants to delay this, and I think he's already told us, because he wants the Ornge special committee to be set up. So I appreciate that.

But I think a more productive way to do it would be to speak to your House leader and perhaps we could speak to our House leader, and with the NDP, and try to get them to resolve this committee or the Ornge issue or whatever it is. But to sit around here and delay a bill for a point—and I'm not saying whether it's valid or not; I'm just saying there's a bill in front of us, and this is our third time now, I think, that it's been adjourned or not dealt with.

It does a disservice to the clerks' department, to the people from Hansard, the French translators and to other staff who are here, to our legal department that is here, to the people in the audience who are here and those who will be reading this transcript later. We all have our political points of view, and that's fine; I have no objection to that and to what Mr. Yakabuski is trying to achieve.

Maybe we could go back to our House leaders at some point in time, have someone explain that the committee's not moving and instead of fighting this war of attrition, try to resolve this in a way that benefits all of those involved in this bill. In the substance of the bill we're dealing with important things, and Mr. Yakabuski has touched on many of them. We know that court security is important, and we know that protecting nuclear facilities and other facilities is important as well. I think it would be in the interests of the people who protect those places, especially the nuclear facilities, to have something in place.

The present act, we all agree, needs to be changed. No one is defending the previous act, and we're trying to be productive and make some changes here. For a number of amendments—you know, we'll meet next Thursday, and if nothing is resolved, we're going to go through this again.

I'm willing to sit here—it's part of my job—from 9 till 6, or if you want to start earlier, we can start at 8 and, with the permission of the House leaders, go past 7, if we have to. But realistically, I think we have to be practical about what we're doing here.

We all know what's going on here. Let's not try to fool ourselves. I speak candidly from the heart when I say we're at an impasse with the Ornge special committee, and I think that should rest with the House leaders and with question period, where it rightly belongs. But to bring it to committee—no offence, again, to Mr. Yakabuski; thumbs up to that. I just think we're doing a disservice to, again, the various groups: Hansard, the translation services, the clerks' department, the legal department. Have I missed anyone? I think I've included—

The Chair (Mrs. Laura Albanese): Research.

Mr. Lorenzo Berardinetti: Ontarians, the people who turn on and off these mikes and make sure that committee functions properly, those who set up the room and take it down, because there are many other events that are held in here.

Something in my heart is unsettled. Sorry, I'm not going to tell you where that came from.

But anyway, I will say this: I know the point that's trying to be made, and if there's a way that we can do this—I'm not a House leader. I don't know if you are, Mr. Yakabuski.

Mr. John Yakabuski: I'm not.

Mr. Lorenzo Berardinetti: No, I think it's Mr. Wilson.

Interjection.

Mr. Lorenzo Berardinetti: Yes. And the NDP have their House—

Mr. Shafiq Qaadri: Was it Witmer?

Mr. Lorenzo Berardinetti: No, it wasn't Witmer. It's always been—now I've lost my train of thought.

We know who the three House leaders are and they should get together or else a resolution should be made, but to sit here—I mean, this morning the NDP were ready to move on this and debate it, we were here ready to debate it. I don't know if you were ready to debate it

or not, but I just think the point has to be made on the record that I do feel for the others who are here, who are not involved in politics per se, or partisan politics: the actual employees who are here are doing their service, very professionally, as usual. We are basically hampering them and, with that, I would say—we'll listen to the next round and this will continue to 6, no doubt about it, but I just want to make the point: Let's just try to find a way to resolve this and debate this very important bill for the sake of all Ontarians.

Ms. Soo Wong: Vote.

Mr. Lorenzo Berardinetti: I think it's time to go vote. Can I continue talking after?

The Chair (Mrs. Laura Albanese): Thank you for that. We are now within the time allotted to recess for the vote, so we shall do that, and we'll come back.

Mr. Lorenzo Berardinetti: Thank you.

Mr. John Yakabuski: Excuse me, Madam Chair.

The Chair (Mrs. Laura Albanese): Yes.

Mr. John Yakabuski: When I asked earlier, I was told that each member had 20 minutes to speak at any one time, but there was no time limit on debate.

The Clerk of the Committee (Mr. William Short): We have a vote.

The Chair (Mrs. Laura Albanese): We have a vote in the House.

Mr. John Yakabuski: Oh, I'm sorry.

The Chair (Mrs. Laura Albanese): Yes.

Mr. John Yakabuski: Oh, to vote in the House.

The Chair (Mrs. Laura Albanese): Yes, it's to vote in the House. So I am going to recess.

Mr. John Yakabuski: Okay. Thank you very much.

The committee recessed from 1701 to 1714.

The Chair (Mrs. Laura Albanese): So we can resume. Mr. Berardinetti had the floor just before we were interrupted to go and vote in the House.

Mr. Lorenzo Berardinetti: Thank you, Madam Chair. I'm not trying to whittle down the time here, but I just want to make a few pertinent points.

The other point I wanted to make was that last night the Conservative Party tabled, I think, 11 amendments to this bill. We spent most of the day talking about the importance of the document prepared by the lawyer, the solicitor, the research officer, and that was available a long time, on May 2 or early May. The 11 amendments were submitted last night, and I just want to put into the record that they were submitted last night.

We had no objection to moving on and doing the bill—if necessary, take a break to consider some of these amendments—but at no time did we ever say, "We want to adjourn the debate. We don't want to listen or deal with it."

I have a copy of the agenda in front of me. It's the Standing Committee on Justice Policy agenda, Thursday, April 26, 2012, committee room 1.

"Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012.

"9:00 a.m." this morning, it says, "Clause-by-clause consideration.

"10:25 a.m. Recess.

"2 p.m. Clause-by-clause consideration."

We've done nothing on the agenda. It's now approximately a quarter after 5 on the clock here.

As I was saying earlier, whether it be adding 11 amendments or spending most of the day arguing over the research document that was prepared—and I say everything with the greatest of sincerity, keeping in mind that we have a lot of staff here and that there's an underlying point that the Conservative Party or Mr. Yakabuski wants to make regarding another issue—I honestly don't think that it should be brought down to this level. I think the people of Ontario deserve better. They deserve elected members—who are well paid—around the table here to debate the bill and amend it appropriately. The argument regarding Ornge should be dealt with in quarters other than this one, either in the House leaders' offices or on the floor of the House or during question period.

I just find it disappointing that we would not use this committee to prepare ourselves—all of us; not just the Liberals, but every member here, respecting the NDP, the Conservatives—with, I always think, the best faith, not in bad faith but in good faith, to deal with this bill. If they want to take a 20-minute recess or a break or want to explain something further, fine, but to come here this morning at 9 o'clock with my colleagues and other members of provincial Parliament and basically argue over procedural matters and other things I think does a disservice to this committee.

I've been here since 2003. Prior to that, I was a publicly elected city councillor from 1988 till 2003, and I've never seen in my life, in my 24 years—

Interjection.

Mr. Lorenzo Berardinetti: "Your council was better," my colleague says. I don't know. City hall's not in perfect shape either. But the process of democracy is difficult. Winston Churchill once said that of all forms of government, democracy is the least terrible. So there are flaws in our system, and that happens naturally. People disagree, and there are places set up, whether it be the Parliament in England or other Parliaments or other locations around the world, whether it be in the United States or Russia, whether it be in Zimbabwe, whether it be in China, and they try to work things out. I'm not saying it's good or bad, but they try to work things out; otherwise, the world wouldn't function.

Getting back to this committee, it has a purpose. It's the Standing Committee on Justice Policy. An agenda was circulated to us. There are three items contained in it. We've dealt with none of the items, and I apologize, on my behalf and on behalf of my colleagues, to Hansard, to the French services, to the solicitor who's here, to the clerks' department—to all those, because I see in the morning people set up this room. They come in early, they set up the room, put all the tables together, the wiring and all that work which kind of goes unknown—

for really no purpose. It'll be taken down tonight. There may be an event tomorrow or during the weekend in this room, and all because of an argument that really is outside of this room.

I am not frustrated—I mean, if you want to sit till 7 p.m. or 8 p.m. or ask the House leaders to allow us to sit during constituency week, I will support that, and I'm on the record for that. I'm not going anywhere. I like to debate. I'd like to go through an issue, work it out and come to an agreement on what this bill will look like.

To use this time to frustrate the committee, make it not work, do a great disservice to the public servants who are here, who work very hard—there will be a French copy of this soon, and I'm almost afraid to see that French copy version, or the English copy version, because we haven't addressed the substantive issues—the substantial issues—of this bill.

That being said, I have apologized. I hear the bells are ringing, and I would ask, with the greatest respect, let's respect this committee. Thank you.

1720

The Chair (Mrs. Laura Albanese): Thank you, Mr. Berardinetti.

I have Mr. MacLaren wanting to speak and Ms. Wong.

Mr. Jack MacLaren: Again, I'd like to refer to Ms. Hindle's paper, which I find very interesting, and I applauded her for writing a really interesting paper. I'm going to carefully file this for the future. I think I can use it again and again.

I'm going to refer to your page 4. Down near the bottom, it talks about the general approach to warrantless searches at courthouses. You recite a court case in the Ontario Court of Appeal, and I mention this—because it's not something I agree with; I point to it as something that I disagree with and I think we should try not to do, again, because I'm a great advocate for our rights as Canadians, our constitutional rights and our freedoms that were fought for, as I've mentioned several times before.

Here, the Ontario Court of Appeal held that warrantless searches of the public entering courthouses pursuant to the Public Works Protection Act were justified under the charter—according to this former court case of R. v. Campanella—and that court security officers did not need reasonable and probable grounds to conduct searches. I think that's appalling, and it's really unfortunate to hear that a court found that decision, because I can't imagine—it's a rare case where you don't need reasonable—I think you always need reasonable and probable grounds to search somebody. If there's not reasonable and probable grounds, it should not happen.

If somebody is in a courtroom who appears to be a threat or is behaving in a strange or peculiar manner, a judge, a security guard or a policeman would surely act and do whatever is necessary to provide security in a courtroom, whether it's apprehend, arrest or search that person, but there would be reasonable and probable grounds. Never should anything be done without reasonable and probable grounds, because we have constitutional rights that define that that should never happen.

We go across to the next page, page 5, and you are quoting a decision of the Court of Appeal which made the following comments in support of searching all members of the public entering courthouses without prior security: "It is notorious that, unfortunately, there have been serious incidents of violence in the courthouses of this province by the use of weapons that have been brought into the courthouse."

I think "weapons" is the key word there. I wasn't aware that there were quite a number of violent incidents in courtrooms. I've talked to my colleague Mr. Singh, who is a lawyer, and he informed me that he wasn't aware of any significance violence in courtrooms, that it was rare, so to say that it's commonplace is a surprise to me.

However, I think we all agree that there is no place for weapons in a courtroom, and that would be the one and only thing, I would say, that a search would be required for in a courtroom or for entry into a courtroom, and not this business that you do not need reasonable and probable grounds to conduct searches.

On that note, I'd like to just read a paper here that was forwarded to me by the Canadian Civil Liberties Association, an organization that I have the highest regard for, because they stand up and fight for our civil liberties, our constitutional rights, our freedoms as outlined in the Charter of Rights and Freedoms. This is a courtroom law that I would just like to take a minute to read, because I think it's all we really need here in Ontario. It does not create a breach of the independence of the judiciary, and this might be something that we should look into. This came from the Canadian Civil Liberties Association; it's actually a Manitoba law, the Court Security Act of Manitoba:

"Her Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

"Definitions

"1. In this act,

"'court' means the Court of Appeal, the Court of Queen's Bench or the Provincial Court;

"'court area' means a building, part of a building, or space used by a court and designated by regulation as a court area;

"'minister' means the minister appointed by the Lieutenant Governor in Council to administer this act;

"'restricted zone' means a part of a court area designated by regulation as a restricted zone;

"'screen' means search using methods prescribed by regulation;

"'security officer' means a person or a member of a class of persons appointed under section 2;

"'weapon' means a firearm as defined in the Criminal Code ... and anything else that could be used to

"(a) cause death or serious bodily harm to a person; or

"(b) threaten or intimidate a person.

"Appointment of security officers

"2(1) The minister may appoint persons or the members of a class of persons as security officers to provide security in court areas.

"Powers of security officers

"2(2) While carrying out his or her duties under this act, a security officer is a peace officer.

"Weapons"—and here's the key point—"prohibited in court areas

"3. No person shall possess a weapon in a court area unless authorized to do so by regulation or by a security officer."

That's a very important point and really the only concern for security in the Manitoba courtrooms, and something that we might want to adopt here.

"Security officer may screen before entry

"4(1) a security officer may screen a person for weapons before the person enters a court area.

"Security officer may refuse entry

"4(2) A security officer my refuse a person entry to a court area if the person

"(a) refuses to be screened for weapons; or

"(b) is in possession of a weapon and is not authorized by regulation or by a security officer to possess the weapon in a court area.

"Security officer may screen after entry

"5(1) A security officer may require a person inside a court area to move to a place—inside or outside the court area—where screening is routinely conducted, and may screen the person for weapons.

"Security officer may evict

"5(2) A security officer may evict a person from a court area if the person

"(a) refuses to be screened for weapons; or

"(b) is in possession of a weapon and is not authorized by regulation or by a security officer to possess the weapon in a court area.

"Limited entry to restricted zones

"6(1) No person shall enter a restricted zone unless authorized by regulation.

"Security officer may evict

"6(2) A security officer may evict a person from a restricted zone if the person is not authorized by regulation to enter that restricted zone."

The Chair (Mrs. Laura Albanese): MPP MacLaren, I would like to remind you that we should be speaking about the motion—

Mr. Jack MacLaren: Alrighty. This all does pertain to the motion because we're talking about—

The Chair (Mrs. Laura Albanese): The amendment to the main motion.

Mr. Jack MacLaren: Sorry?

The Chair (Mrs. Laura Albanese): We're talking about the amendment that MPP Yakabuski moved.

Mr. Jack MacLaren: Yes, and that is—where do I have my amendment? Right here, I think.

"Once the committee has heard from the ministry counsel on the independence of the judiciary, and had the opportunity to question both ministry counsel legislative research, and is duly satisfied that Bill 34 does not threaten this independence."

All right, I'm sorry; I digress. Thank you for bringing me back on track.

So to carry on with Ms. Hindle's paper here, I was reading the paragraph on page 5:

"The proceedings can provoke strong emotions. Everyone with business in the courthouse and ordinary members of the public have the right to expect that a courthouse will be a place of safety."

And that's really where I guess I digress: that safety involved weapons. I guess my point of view is, we don't need to have all these other things that could possibly create a breach of the independence of the judiciary, such as asking for identification, the reason you're going to be in the courtroom; "search" is undefined and therefore it could be an extensive search. The Manitoba law defines a very more restrictive search pertaining to weapons only. That was the point I was trying to get at there, that this was a good idea and something that does not breach the independence of the judiciary. Perhaps it was a bit lengthy that I read the whole thing. I find it fascinating, but maybe everybody doesn't.

1730

But back to your paper, Ms. Hindle: "Everyone with business in the courthouse and ordinary members of the public have the right to expect that a courthouse will be a safe place," which I said. "The public generally expects the government to ensure the safety of people who are either required or wish to attend court," and we all agree with that. We want courtrooms to be open, public, to invite people there. We don't want to do anything that would discourage that. Of course, extensive searches of body and cars and things are an unnecessary and undesirable thing, in my view. Bill 34 actually calls for all of those things, and I think it's becoming clear from people like the Canadian Civil Liberties Association that they are unnecessary and undesirable. Weapons should be our only concern, and in that way we do not discourage people from coming to a public place and seeing the public event of a trial. "Most members of the public would expect the government to take reasonable measures to ensure the safety of the courtroom environment," and again, that's what we are trying to work toward or advocate for.

"The Campanella decision also upheld the constitutionality of section 137 of the Police Services Act, which requires the police to ensure the security of judges, court participants, and the premises, as well as 'ensuring the secured custody' of accuseds brought before the court.

"In a more recent case of the Ontario Superior Court of Justice, R. v. Riley, the court held that the Chief Justice of Ontario, the Ministry of the Attorney General, the chief of police and the trial judge share responsibility for security in courthouses." Again, we want to be concerned that Bill 34 would potentially interfere with a judge's ability to have decision-making power over security within a courtroom, although it has been pointed out that a judge certainly wouldn't be an expert, necessarily—probably not—and that he would have to consult security people for advice on what would be an appropriate level of security in a courtroom. "In particular, while trial judges may have jurisdiction over security in

their courtrooms, and the police maintain the security of courthouses under section 137 of the Police Services Act, neither may exercise complete control:

"'Neither the chief of police nor a trial judge can be solely or even primarily responsible for [establishing a secure environment at a criminal trial]. Security involves important issues of public policy, the physical structure of courthouses and a considerable expenditure of public money that far exceeds the authority of the chief of police or a trial judge to commit to.'"

So I think we all understand that, that it's a very complex issue, that we need people who understand the structure of the buildings, the physical layout of the buildings, the official plans of the buildings, and that police chiefs and trial judges need to be able to consult people to get that kind of information so they can properly ensure security. It was pointed out to me that a courthouse that would have a basement, perhaps, could potentially be a place for a security-risk person to park a van full of explosives, for instance. So that would be more knowledge of the floor plan of the building, the structure of the building, the danger to the courtroom if it happened to be above a place where a bomb could perhaps be placed.

I know that during the deputations, Mr. Berardinetti asked a question of police: What would happen if a lawyer brought a briefcase into a courtroom and had a gun in it? I remember that you and I were out in the hallway when you asked that question. Again, that relates to weapons, and of course, "Should a lawyer be searched or be exempt?" was one of the questions. Many lawyers were very concerned that the confidentiality of papers in their briefcase for their client should be privileged and protected, and therefore searching a lawyer's briefcase is an unwanted thing. But I think we all agree that that briefcase should be searched or at the very least scanned for a weapon such as a gun or a knife. That, I think, was the point you were trying to make, and we all agree on that point. But again, that's a weapons concern. Therefore, for the security of the courtroom, even a lawyer's briefcase should be scanned so that we don't have to worry about that, because, as you explained, there would be a potential reason why a lawyer might be frightened by, say, a mobster or an intimidating person into carrying a gun into a courtroom, which he normally wouldn't do if he wasn't influenced otherwise.

"'Security must also engage the responsibilities of the Chief Justice and the Ministry of the Attorney General.'

"Representatives from the police, the Chief Justice, the Ministry of the Attorney General, and the affected trial judge must all work together to manage the security arrangements at Ontario courthouses."

I think the point here again is that we don't want to breach the independence of the judiciary. I think that that can be done without going to any great extreme, so that judges will have the freedoms to be in charge of security in courtrooms. We'll have security guards or police as required, depending on just how much risk or danger there is in a particular court trial. If it's a dangerous mobster or gang type of crime where there are murders and violence involved, certainly a higher level of security would be warranted there and greater measures taken—maybe even extraordinary measures—which normally would not be needed for, say, a more ordinary, less dangerous and less risky type of trial.

I think certainly with common sense and with regard to Bill 34, if we're careful not to get carried away with taking away too many of our rights and freedoms—or we should certainly not fall into the trap of taking away too many of our rights and freedoms by asking for identification and reasons why you're in a courthouse, body searches, searching of cars when they're unnecessary. We could say that security guards would be given the option or the right to possibly and occasionally ask for those things. The problem is that when you put those kind of things in legislation, occasionally an unreasonable person who becomes a security guard could overstep his bounds and do unreasonable things. So good legislation can be abused by bad people. We are all human beings, and occasionally the wrong person becomes a security guard or even a policeman, and that's why we have appeal processes, oversight and accountability.

But the best way, I think, to overcome the risk of abuse of law is to make sure we don't provide opportunities for abuse of law where people would potentially lose their freedoms and their securities. We can fall into that trap again with Bill 34 of going overboard to try to account for every potential impossible risk and failure, or security risk, in a courtroom.

I think what we have to learn to accept in this country is that with freedom comes risk, and we have to, as citizens and Canadians in Canada, accept that the price of freedom is that, yes, something could happen. There will be a risk that somebody could potentially hurt us, and we have to accept that that's just the reality and one of the risks of living in a free and democratic society, and having free and open courtrooms. In that way, when there's freedom for people and the public, and we don't get carried away with putting too many things in a bill like Bill 34 that would take away, breach, the independence of a judiciary—again coming back to that, it would have been very nice to hear from the ministry counsel. I'm not sure if that's going to be something we're going to be able to do. I would feel greatly remiss if that cannot happen. That's in this motion and I would very much like to hear that. It's not something I can speak to; it's something I'd like to listen to; and if that is something that doesn't happen, I think we are all just less for it. It would be an injustice if that was an end result here.

We're talking here about, as we go down Ms. Hindle's paper, warrantless searches of inmates in courtrooms. Again, I think we have to have regard for the rights of people who are inmates and who are prisoners. I know I certainly have regard for people who have been through the legal system and made mistakes and been convicted, gotten released. I have—

The Chair (Mrs. Laura Albanese): MPP MacLaren, I am sorry to interrupt you—

Mr. Jack MacLaren: Am I off track again?

The Chair (Mrs. Laura Albanese): No, but I believe your time is up; your 20 minutes have expired.

We are almost at 10 minutes to the vote, but I have flexibility. I have Ms. Wong and Mr. Singh, who still wanted to speak, and Mr.—

Mr. John Yakabuski: Well, might I just suggest, Madam Chair, that we are now inside of 10 minutes, but when that vote takes place we will then be at 5:50.

The Chair (Mrs. Laura Albanese): Correct.

Mr. John Yakabuski: With any reasonable time to get back here from the vote, I would suggest that we simply adjourn at this point, because we are going to come back for, what, eight minutes? Seven minutes? Six minutes?

The Chair (Mrs. Laura Albanese): If that's the will of the committee.

Ms. Soo Wong: Madam Chair, I want some clarification from my colleague before we adjourn on this motion that's been put forth to amend my motion, because I want to be very clear so that I can go back to staff. So I just wanted to ask the question, Madam Chair—

Mr. John Yakabuski: Are you asking the Chair or asking me?

Ms. Soo Wong: Well, through you to you, Mr. Zakabucci, through the Chair first. I just want to make sure—

Mr. John Yakabuski: Yakabuski.

Ms. Soo Wong: Yakabuski, okay. The question I have here is: Are we asking these ministries' counsels to come to the next meeting to address the concerns about this potential threat of independence? I want to be very clear. If we're going to adjourn and not be clear on this motion, Mr. Yakabuski, I will be concerned, Madam Chair.

The Chair (Mrs. Laura Albanese): Well, that's what the amendment asks for, I would assume.

Mr. John Yakabuski: The amendment, obviously, has not been taken care of.

The Chair (Mrs. Laura Albanese): It has not been taken care of today and it's still on the table—it's on the floor—but that's what it would ask for. It depends on how the committee votes on it.

Mr. Lorenzo Berardinetti: Madam Chair, if I may just quickly: I'd like to move a motion that we continue past 6 until 10 p.m. and that we talk to our House leaders during this bill intermission. My House leader is in the House, and I think the other parties would be here. I move that we sit till 10.

Mr. John Yakabuski: That's not happening.

The Chair (Mrs. Laura Albanese): We would need a motion—

Mr. Lorenzo Berardinetti: Why is it not happening, Mr. Yakabuski?

Mr. John Yakabuski: It's not happening.

The Chair (Mrs. Laura Albanese): Excuse me. We would need a motion passed in the House to do that.

We will now recess and go upstairs for the vote.

The committee recessed from 1743 to 1755.

The Chair (Mrs. Laura Albanese): We're reconvened. Ms. Wong, you had the floor.

Ms. Soo Wong: Thank you, Madam Chair. I just want some clarification, through you, to Mr. Yakabuski, with regard to his amendment to my main motion. He's requesting that he wants to hear from the ministry counsel on the independence of the judiciary and then have an opportunity to ask the staff questions with respect to this piece; am I correct?

Mr. John Yakabuski: The motion is the motion.

Ms. Soo Wong: I want to get some clarification because—

The Chair (Mrs. Laura Albanese): We're debating the motion. The motion hasn't been voted on yet, but that's what the motion is asking for.

Ms. Soo Wong: Okay. Should the motion get approved or supported by the—

The Chair (Mrs. Laura Albanese): Carried.

Ms. Soo Wong: —carried by the members, I'd like to put it on the table, Madam Chair, that this item be the first item for next week's committee, so that at the beginning we hear from staff on this particular item, and it will be a time-sensitive item. That's what I want to ask.

The Chair (Mrs. Laura Albanese): The motion will be definitely the first item on the agenda because that's the one that is being debated. That will depend on the will of the committee. I've asked if there was further debate. If we wish to hear from ministry counsel at that point, it will be up to the will of the committee.

Ms. Soo Wong: You see, Madam Chair, my biggest concern, and not just concern, but also disappointment—we have twice today accommodated a recess for the PC colleagues, and that's fine. Being respectful of the staff time—I think my colleague has already spoken about this issue. The ongoing frustration of the committee and the delay strategy by the PC Party in terms of moving this bill forward need to be addressed. I'm not sure this committee is the right forum to address the concerns that have been raised by my colleague.

But more importantly, Madam Chair, with respect to the committee and the process piece, we also have to be very mindful of the time and the resources that have been wasted the last three weeks to deal with—the intent of this committee is to go through clause-by-clause. It's now hitting three weeks, and respecting the staff and ultimately the taxpayers of Ontario—basically the strategy that has been put forth by my colleagues opposite is to punish the standing committee for its work at the expense of your philosophical, or your concerns about not having a select committee—call it whatever you want.

But I am extremely disappointed and concerned about this kind of strategy to almost hold this committee hostage in doing its good work; okay? There is another forum to address the concerns raised by my colleagues opposite. This is not the proper committee to deal with that kind of stuff. Those are my comments, Madam Chair.

The Chair (Mrs. Laura Albanese): Thank you, Ms. Wong. I have MPP Singh, who wanted to say something. We have one minute left, and I have MPPs Singh and Yakabuski.

Mr. Jagmeet Singh: I'm okay, then.

The Chair (Mrs. Laura Albanese): You're okay.

A 30-second reply before we adjourn?

Mr. John Yakabuski: I just want to respond to one thing—well, we had two minutes to go a minute ago.

I wanted to respond to both the comments by Mr. Berardinetti and Ms. Wong with respect to the adjournments. Last week, Ms. Wong herself indicated that she would be asking for an amendment to deal with the NDP amendments that were brought in late last Wednesday for the committee. So to imply that the only people seeking amendments last week were the Conservatives would be erroneous. You indicated that you were concerned about the NDP amendments that arrived late and that you would be looking for time to discuss and digest those amendments yourself.

So as to the amendments that we've put forward and they're prepared to look at: Well, they weren't prepared to look at the NDP amendments last week.

I realize, Madam Chair, that time has expired. We will, I guess, be discussing this again next Thursday.

The Chair (Mrs. Laura Albanese): This committee is adjourned until next Thursday, 9 a.m.

The committee adjourned at 1800.

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Jeudi 17 mai 2012

Standing Committee on Justice Policy

Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2012

Comité permanent de la justice

Loi de 2012 sur la sécurité des tribunaux, des centrales électriques et des installations nucléaires

Chair: Laura Albanese
Clerk: William Short

Présidente : Laura Albanese
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 17 May 2012

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 17 mai 2012

The committee met at 0915 in committee room 1.

SECURITY FOR COURTS, ELECTRICITY GENERATING FACILITIES AND NUCLEAR FACILITIES ACT, 2012

LOI DE 2012 SUR LA SÉCURITÉ DES TRIBUNAUX, DES CENTRALES ÉLECTRIQUES ET DES INSTALLATIONS NUCLÉAIRES

Consideration of the following bill:

Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012 / Projet de loi 34, Loi abrogeant la Loi sur la protection des ouvrages publics, modifiant la Loi sur les services policiers en ce qui concerne la sécurité des tribunaux et édictant la Loi de 2012 sur la sécurité des centrales électriques et des installations nucléaires.

The Chair (Mrs. Laura Albanese): Good morning, everyone. We hope it's going to be a good morning. We are here to resume the debate on Bill 34. We had motions on the table filed by Mr. Yakabuski and Ms. Wong. I believe that the first item that we're dealing with is the amendment to the main motion by Ms. Wong that Mr. Yakabuski moved, and it reads as follows:

"Once the committee has heard from ministry counsel on the independence of the judiciary, and had the opportunity to question both ministry counsel and legislative research, and is duly satisfied that Bill 34 does not threaten this independence."

I guess this needs to be read as a consequence to the main motion that was moved by Ms. Wong.

Any further discussion on that?

Mr. John Yakabuski: I move an amendment to that motion.

Interjection: An amendment to the amendment.

Mr. John Yakabuski: An amendment to the amendment, Madam Chair. I'll read it, only because I'm the only one who can because I'm the one who wrote it and nobody else would be able to read it: And the committee thoroughly reviews the report of the Office of the Independent Police Review Director released May 17, 2012, on the G20 entitled Policing the Right to Protest: G20 Systemic Review Report.

The Chair (Mrs. Laura Albanese): The clerk will need to give each committee member a copy of that motion, so we shall recess until he can do so. Since we do have a vote in the House in 23 minutes, we'll come back right after that vote in the House.

The committee recessed from 0916 to 0948.

The Chair (Mrs. Laura Albanese): We're back.

Mr. John Yakabuski: I don't think for long. I suspect a malfunction.

The Chair (Mrs. Laura Albanese): Well, we'll see. For now, we're back and we're dealing with an amendment to the amendment on the main motion by Ms. Wong. Mr. Yakabuski has read it into the record just before we recessed. Everybody has received a copy of the report that is mentioned at the end of the motion. Any discussion?

Mr. John Yakabuski: Pardon me. May I?

The Chair (Mrs. Laura Albanese): You may.

Mr. John Yakabuski: Seeing as I proposed the amendment, I want to thank my colleague Mr. MacLaren for bringing forth this issue. He could have just as easily proposed the amendment, but he passed it to me and I'm thankful for that. But I'm sure he will want to speak at length to this as well.

It's 260-some-odd pages, Madam Speaker, of a report from Gerry McNeilly, the independent police review director. Let's be clear: The reason we're here, no longer debating, but in committee for Bill 34, which was tabled by the government, is quite simply to try to address the absolute mess that was perpetrated on the G20 back in 2010, and how the government failed so miserably to carry out its responsibility to keep the peace and order, which we accept is part of their responsibility, to pass that task on to the rightful agencies. But of course, they passed this regulation in secret, behind closed doors, hidden from the view of not only the public but, of course, the members of the Legislature. That is in fact the real travesty, that they felt they needed to pass this law in secret, not in the Legislature. The Legislature—I think you might recall, Madam Chair, because you were a member of the Legislature at the time—was sitting when they actually passed this regulation, basically taking out of the dustbin what was known as the Public Works Protection Act, a law that was passed in 1939, at the outbreak of the Second World War. No one at this table would recall the circumstances at the time, but we're all capable of reading history. We should also all be capable

of learning from history. So they brought in this law, which was an absolutely inappropriate piece of legislation with respect to policing the G20.

This report is an evaluation of what may have gone wrong. I'm not stating anything to do with any conclusions on this report, because I haven't read it, but I'm pretty comfortable in saying that no one else at this table has read it either. We only heard about it yesterday. It was released yesterday. It is a comprehensive report, as you can see. I mean, it's significant in volume. Madam Speaker, when I say 260-some-odd pages, that's a printing that—there's no way on God's green earth that I can read it without at least two helpers, you know?

The Chair (Mrs. Laura Albanese): It's good that the long weekend is coming. We'll have some free time to—

Mr. John Yakabuski: Well, I was hoping not to have to read it on the long weekend, but perhaps I would have some time—

The Chair (Mrs. Laura Albanese): It's also constituency week.

Mr. John Yakabuski: —before we return on the Thursday. This committee would, of course, return the Thursday after constituency week, so hopefully I would have time during that period, and my colleagues and certainly my friends on the other side and my dear friends to the left of me. Then we would also have the opportunity, individually, to draw our own conclusions. But also, I think our own researchers, our own staff in our offices who are policy advisers etc., would also have the opportunity to read this report.

I'm not even going to begin to comment on anything in it, because I've only read the first page, and that's just the title page. All I've done other than that, Madam Speaker, is we got a little snippet yesterday, Madam Speaker—I'm sorry, Madam Chair. Maybe I'm predicting the future here. You never know. I'm looking forward to the day, because if it happens, maybe it means I'm still here.

So I'm not even purporting to think about any conclusions. There was some discussion in the press yesterday. The news media ran a story on it. Mr. McNeilly was on the news last night. I did see part of that press conference. It was on the CBC national news. It was the second story maybe on the national news last night, so clearly it's an issue of substantial gravity here in the province of Ontario and obviously across Canada. This was an international conference. The most powerful world leaders were there, so this is not something that was a weekend festival. It was a meeting of the leaders of the 20 most significant nations in the world, and high-level and huge, huge security, of course, was part of that.

So this report talks about, presumably, the role of the police and if, in fact, that needs to be chastised, challenged, questioned, whatever. We did hear some of the things in there, and there was some criticism of the police—significant criticism of the police—in the news reports. Are we to simply accept the conclusions of the page or so in the Toronto Star, the Globe and Mail or the Sun? Or are we, as members of this committee—who are here because of this.

The only reason we're here is because of the introduction of Bill 34. Of course, after the G20 issues, the massive protests and the number of arrests that took place—over 1,000 arrests, I believe it was—some soul-searching went on. The government then went into its circle-the-wagons protection mode: deny, dither, delay and try to deflect, which is the pattern of them to do. It did cost Rick Bartolucci his job—not completely; he got demoted to a lower-level ministry. So he did get his wrist slapped. He was the Minister of Community Safety and Correctional Services at the time, if that was the title at the time; they change it all the time just so that people don't catch wind of them, you know? So he got a significant beat-down from the Premier for his role in it. Then, as part of their defence mechanism, they were going to look at it.

But thank goodness for André Marin, the provincial Ombudsman. He said, "You know what? I'm taking a look at this too. I'm taking a look at this too." He released a report called Caught in the Act. That was one scathing report.

As part of our deliberations here, if I could ask the clerk, Madam Chair: Have the members of the committee been furnished with a copy of Caught in the Act, the Ombudsman's report?

The Clerk of the Committee (Mr. William Short): All members of the assembly are given a copy of the Ombudsman's report when it's tabled.

Mr. John Yakabuski: Okay, that's great. Now, it was compulsory reading in the Conservative caucus. It may have been put on the banned book list in the Liberal caucus, because they may not have wanted their members to read it, but we certainly did, and boy, that was one—I know my close friends from the NDP here, they read that report in detail. They were pretty concerned about the findings of the Ombudsman's report as well, but I'll let them speak for themselves. I never pretend to speak for them; I'm just supportive whenever I can be.

So the Ombudsman releases his report. It just rips these folks apart on the handling of the G20. You know what we have yet to hear? It's not for my benefit; I can live with it. I'm not going to fret if I don't receive an apology from the Liberals—it should start with the Premier. If I don't receive an apology from the Liberals with respect to their role in that debacle, I'm okay. But certainly, the citizens of this province deserve that apology. It has yet to materialize. We have not heard a word of contrition from this government whatsoever on the role they played and the mess they made of it.

You know, there is a tacit admission, I suppose, that they, after the Ombudsman's report—what I love about André Marin is that he doesn't pull punches. That's the role of the Ombudsman. His job is not to salve the government and admonish them in a gentle way. His job is to point out in very, very clear ways how a government fails its citizens. That's the role of the Ombudsman.

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When government doesn't do its job, it's the job of the Ombudsman to step in and direct—he cannot direct the

government, but the moral suasion that he or she, whoever would hold the office, would have is quite significant. When he sees an injustice—that's the one thing I really appreciate about Mr. Marin—he goes at it and he comes up with something that is really significant. He doesn't beat around the bush. He really does his job. We're fortunate to have André Marin as an Ombudsman.

I recall, Madam Chair, when the time came for his reappointment, this government did everything it could to try to get away from reappointing him. They did not want to reappoint Mr. Marin because they knew that he does the job. His role is not to chastise the opposition, his role is not to go out and find problems on the street by some non-governmental agency and chastise them. His role is a watchdog. He's a watchdog on the government, and he does it extremely well.

But you'll recall—because I sat on that committee that was involved in the short-listing of the candidates for the Ombudsman—it was just ridiculous how badly they did not want to have André Marin reappointed as Ombudsman. But at the end of the day—the public pressures and the fact that he was quite simply, without any question, the best candidate for the job to be reappointed—they had to relent because it would have been absolutely embarrassing for them to continue with their silly charade of trying to discredit him. Even in the House they tried to discredit him on different issues. That was quite regrettable.

As I say—and I know I've drifted a bit away from the motion at this point, but it is important to talk about Mr. Marin and the role that he plays. Let's just try to move forward a little bit.

As a result of the Caught in the Act report, the government then commissioned a former Chief Justice of the Ontario superior court—I'm sure the record will correct me when I'm wrong; I don't have the exact information—a former Attorney General, tremendous parliamentarian—then, of course, he was appointed to the bench. He's been called upon on more than one occasion to advise the government on what they might do when the government messes up. Did you ever notice that? That the government—it's happening a little too often, I might point out, Madam Chair, where the government is calling on someone to find them a way out of something because they've messed up. You know what would be a really good thing for the government to practice? Messing up less. If you messed up less, you wouldn't have to be dealing with these kinds of things, and we wouldn't be sitting here today; we'd actually be in the Legislature involved in the debate.

Anyway, they called on Roy McMurtry to kind of track them a course out of this malaise. He gave them some advice on what they might put into a new act, a new law, to replace the Public Works Protection Act. If you just let me go back for a second, that was the one I talked about that was introduced in 1939. That was so woefully inappropriate as a piece of legislation to police the G20, yet they went ahead and did it anyway. So Roy McMurtry was then tasked with the job of finding a way out of it and helping them to navigate their way into something new and better. This is where Bill 34, government order G34, I guess we'd call it—is that the way they do it here? I think something like that—that's where Bill 34 came forward. So now we're through second reading debate, we're through the deputations and we're into the clause-by-clause portion of the bill—well, we're getting there. We're getting there. But one of the things, obviously, we need to do before we get into clause-by-clause—and you see the picture I'm painting is everything that was done wrong, Madam Chair. I haven't got it all; I'm sure I'll speak more. You just can't get it all in at one time. To talk about all the wrongs is almost too emotional to do in one 20-minute snippet because it gets to you to think that this is how we've gotten here.

Boy, we don't want to repeat those mistakes, do we? That was a sad time in Ontario's history. I know I'm not asking you for comment, Madam Chair; I'm just asking the question in a rhetorical way, I suppose, and I just shake my head.

So what do we do from here? Well, we've got to get it right this time. I say that respectfully to my colleague across the way—is it Scarborough–Agincourt? I'm very good at those ridings, you know. If she doesn't get the job as Speaker, maybe I'll get it.

Ms. Soo Wong: We'll see.

Mr. John Yakabuski: But I don't know, I wouldn't be able to vote then, eh? Gosh.

So we've got to get it right. We've got a piece of paper. Whoa, we've got lots of pieces of paper here, Chair. If I was to hold this and read it and not put it down, I would be building muscles. Of course, I might want to be moving it a bit to get those muscles moving as well—and probably having a healthy diet, maybe more vegetarian. My friend from Bramalea–Gore–Malton would agree.

Do we really want to proceed before we read this report? Do we really want to send this bill back to the Legislature without the benefit of having read, digested, analyzed and drawn conclusions from this report? Because as we have learned, we have a deadline that exists with respect to amendments to the bill, and that deadline has passed. We also find that that is not an absolutely deadline, because amendments have been tabled since that deadline. So I don't know if an amendment will come out of this report.

The Chair (Mrs. Laura Albanese): And with that thought, I will thank you for your comments. Your 20 minutes have expired and I have to give—Ms. Wong has asked to speak.

Ms. Soo Wong: Thank you, Madam Chair. Okay, a couple of things: Given my colleague opposite is putting before us an amendment to the amendment to his motion, let me just remind our colleagues here that the bill is about court security and about nuclear safety and nuclear security. It's not about policing. It's right there, policing the right way to protest. Let me remind you about that. It's not about public order and policing and not about this report, okay?

The other thing is, right at the beginning of the report, I want to remind my colleague opposite, it is your PC cousins who started all this trouble. It said right here in the report: "No Canadian location for the G20 was set until December 7, 2009.

"In addition, it was unprecedented for one nation to host both the G8 and G20 summits back to back."

Then the report also said, "This left little time to plan and execute the event," and it created unique challenges in security. So at the end of the day you can argue, and whatever it is, Mr. McNeilly wrote in his report right at the beginning what some of the concerns are.

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So let me remind my colleague also about—and Madam Chair, through you to my colleague opposite, this is now four consecutive weeks. We have new members of my colleagues coming to meetings—that's fine. The other thing here is, I want to question and challenge the sincerity of my PC colleague opposite to move this bill forward and get this done. I also want to be reminding my colleague for this piece, I need us to vote on an amendment to the amendment to Mr. Yakabuski's motion. But we're here to do a job, and I think my colleague from the NDP is also here to do a job, to get this thing done.

Every week, for the last four weeks—and I want to be on record—there's been delay tactics after delay tactics and not getting back to clause-by-clause. And if we're here to talk about another issue dealing with policing, that's another matter. This particular bill is talking about court security, it's talking about nuclear security, and we must stay focused.

I do respect Mr. Yakabuski's concern about that report, but at the end of the day, we've got to go back to what was the original purpose of this bill and we need to get back down to business, to review it clause-by-clause and do what Ontarians have voted for us to do. Not only is it about getting things done, Madam Chair, it's the fact that we're here to respect the taxpayer. The last four weeks—I want to find out—I don't know who has the data, Madam Chair—how much it costs the taxpayer to have, every week, these kind of delay tactics. It would be in the thousands of dollars.

Mr. John Yakabuski: It was $750 million at Ornge.

Ms. Soo Wong: It doesn't really matter. Okay?

The fact of the matter here is there's a delay tactic—for you, for your party, to consistently, every week, do amendment after amendment when we've already moved forward to do clause-by-clause.

So Madam Chair, I move again that we vote on this amendment to the amendment to Mr. Yakabuski's motion and that we go back to my original motion to go clause-by-clause, because that's what Ontarians want us to do: to address the court security concerns as well as the nuclear safety concerns. Thank you. Maybe my colleague wants to say anything.

Mr. John Yakabuski: Does it go in rotation?

Ms. Soo Wong: I took less than 20 minutes.

The Chair (Mrs. Laura Albanese): It's up to the Chair, and I am just trying to give the members who are putting their hands up and indicating that they want to speak a chance to give their opinion. Mr. MacLaren? Sorry about that. Mr. Yakabuski had indicated before you. Sorry.

Mr. Jack MacLaren: That's fine.

Mr. John Yakabuski: Of course, I wasn't finished; I'm actually going to come back to that. But I do want to address a couple of the things that Ms. Wong did say. She said—I don't understand sometimes her argument—"It's not about policing," but then she quotes from the report; "It's not about the report," but she quotes from the report.

It's a dangerous thing, sort of like you read the inside cover, the foreword, of a book, and then maybe read the back inside cover, and figure you've got the book. It's bad practice. A good practice is to read the book and then to draw your conclusions, not take a snippet off the front page and figure you've got it all mapped out—bad practice. That's how bad laws get passed and that's how bad decisions get made in cabinet. Do you remember that decision? "Oh, let's use the Public Works Protection Act to police the G20." Of course, she sees one little word that might turn some of the attention to the federal government, and the Liberals go right back into their deny-delay-deflect mode and see if they can't make it a Stephen Harper issue. Anyway, Stephen Harper is not here. We're passing the provincial law.

Then she says it's not a police matter, but I want to read what it says here. It says, "Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act...." It's not about policing? We're amending the Police Services Act. This is news to me that the Police Services Act is not about policing, because, you know what? I thought all along it was. So this is news to me.

It is very much about policing. You can spin this any way you want, but this is about policing. We're amending the Police Services Act. When you take a report and throw a little bit out off the first page, because you're being intensely partisan, that's a concern.

You folks created this mess. It wasn't us. We didn't pass the law. We didn't go tell the police, "We've been digging through the old archives and we found this dusty old law here. Go use it and we'll deal with the fallout after." That's the same kind of practice that you want us to conduct by reading the first page and saying, "No need to go any further. No need to go any further. We've got it all taken care of. People will be happy with that. We've passed a new law."

As I said, the law has been around since 1939. It was the wrong piece of legislation to use to police the G20, but it's still in effect and it will be in effect until such time as Bill 34 is passed. So it's not like the sky is falling. We've had court security since 1939—we had it before that but we certainly didn't lose it in 1939. We have security around our nuclear plants.

In the interim, I would ask—I mean, she represents Scarborough–Agincourt; she's not too far from the Pickering plant, she's not too far from Darlington—from

the day this new act was tabled in the Legislature at first reading till today, have there been widespread reports of "We've gone into limbo here. Security at Pickering or Darlington is now jeopardized because we don't have this law passed"? No.

She'll have a chance to speak again, and if she has a report, the committee would love to hear of it. If she has evidence that says that security around those plants is in jeopardy, we'd love to hear from her, we'd love to have the report. I think it's important that the committee sees these kinds of things, if they exist. But if they don't exist—and I'm not drawing any conclusion here at all, but if they don't exist, I would also love to hear that from the member. We shouldn't be fearmongering about what may or may not take place in the time between tabling of Bill 34 and its passage into law, if there's no justification for doing so.

You can put things on the record if you want. I know you've got your marching orders. I know you've been told by the folks up in the corner office, "This is what we want. This is what we expect." You're doing your job, and I respect that and I respect you for that. However, I suspect somebody thought they were doing their job when they rolled into that cabinet meeting in 2010—I don't have the exact date in front of me; the House was in session, so we know it wasn't too late in the spring or summer. I suppose someone felt they were doing their job when they walked into that cabinet meeting and said, "This is the one. This is the one we'll go with," and the minister spoke to his colleagues—of course, I'm only hypothesizing here. I want the public, the people in the room today to know that I'm not speaking factually; I'm only surmising or hypothesizing what may have happened. I'm trying to draw a picture. If my friends across want to challenge me on that, that's fine. I don't know if any one of them was in the room.

1020

But I think we can kind of picture how it might have happened. They walk in and they said—you know, it's sort of like, who was it? Was it Socrates or who was it who was in the bathtub when it overflowed?

Mr. Shafiq Qaadri: Archimedes.

Mr. John Yakabuski: Who was it?

Mr. Shafiq Qaadri: Archimedes.

Mr. John Yakabuski: Archimedes. Thank you very much.

Interjection: He said, "Eureka."

Mr. John Yakabuski: He said, "Eureka"—you know, when the bath overflowed. Things are overflowing in Greece today, that's for sure, and we want to make sure they don't overflow here in Ontario. But I digress.

So it was like whoever walked into the room that day, and it was like, "Eureka, we've got the answer. We're going to save the G20. We're going to be a hero." And the minister said, "Yes, yes. Maybe I'll get a promotion to a higher-level cabinet post."

Well, it didn't work out, because, as I said last week, instead of measuring twice and cutting once, they brought in the plank and he couldn't get the Skil saw out fast enough to cut that thing up, and he made a mistake.

I'm not trying to be harsh, because that's not my nature at all, but I'm trying to be thorough, and I'm trying to make sure that we don't mess this up. So 1939—that is 73 years, eh?

Mr. Lorenzo Berardinetti: It's 72 and a half.

Mr. John Yakabuski: Well, I don't know what date it passed on—you're right. You know, Mr. Berardinetti is on the ball today, because obviously, at this time of year in 1939, they wouldn't have passed the law, because the Second World War hadn't begun. It didn't begin until September, when Nazi Germany, under Adolf Hitler, invaded Poland. I appreciate that help.

So it wouldn't be quite 73 years old, but you know what? It's pretty darn old. It's pretty darn old. It has been around for a while. Is there that big of a rush to get this through and maybe we'll be back here next year dealing with amendments to the act because we didn't get it right? I'd hate to say—can I ask a question of the clerk while I'm in my 20 minutes without losing my time?

The Chair (Mrs. Laura Albanese): Sure.

Mr. John Yakabuski: Of course, I can always come back, right?

The Chair (Mrs. Laura Albanese): Absolutely.

Mr. John Yakabuski: I don't pretend to be an expert—

The Chair (Mrs. Laura Albanese): You have only about 20 seconds before we recess. It is 10:25, and we'll have to be up for question period.

Mr. John Yakabuski: Oh, my goodness gracious, where does it go? Are we coming back today, then?

The Chair (Mrs. Laura Albanese): At 2 o'clock sharp. You can continue. You'll still have the floor at 2 o'clock.

Mr. John Yakabuski: Well, I guess we're going to recess, then.

The Chair (Mrs. Laura Albanese): Yes, we're going to recess right now. Thank you.

Mr. John Yakabuski: I'll see you this afternoon.

The committee recessed from 1025 to 1408.

The Chair (Mrs. Laura Albanese): Okay, it seems like we have a quorum—

Mr. John Yakabuski: What is a quorum, Madam Chair? We can change that—

The Chair (Mrs. Laura Albanese): It's five. Mr. Yakabuski, you had the floor. You had nine minutes still to speak but were being delayed. I'm afraid I'm going to start docking minutes off your nine minutes if you—or you may not wish to speak for the full 20. I'm not sure.

Mr. John Yakabuski: What do you think?

The Chair (Mrs. Laura Albanese): Well, then, at least proceed, because the clock is ticking.

Mr. John Yakabuski: Well, the clock is ticking. I'm just going to pull up my socks, both literally and figuratively, Madam Chair, and get down to brass tacks, however we can—

The Chair (Mrs. Laura Albanese): The time is already calculated, even the pulling up of the socks.

Mr. John Yakabuski: Oh, I know. It looks like we're going to be here till suppertime. I'm just trying to remember exactly where I was, because that was, it seems, eons ago.

The Chair (Mrs. Laura Albanese): Well, you were talking about your amendment to the motion and therefore—

Mr. John Yakabuski: Yeah, my amendment with respect to the G20 systemic review report. But what I did bring this afternoon too, Madam Chair, for the benefit of the committee, is Caught in the Act. She's a thick one, too. It is not a small report.

The Chair (Mrs. Laura Albanese): This morning, all members of the Legislature received that. They received that some time ago, and some of us have read it thoroughly.

Mr. John Yakabuski: Yes, you did point that out, and I also registered my suspicion that it was on the banned book list of the Liberal caucus.

The Chair (Mrs. Laura Albanese): I'm sorry to disappoint you.

Mr. John Yakabuski: Oh, the Chair is engaging. That's good; we could have a fun afternoon.

Well, I know it was compulsory reading in ours, as I said this morning, because there was nothing in this report that caused us any concern—the Caught in the Act—but there was a fair bit in this report that would have caused the government caucus concern.

I'll be perfectly honest with you, Chair. I don't hold the individual members of the Liberal caucus at the time responsible for what happened. I believe they knew about as much of that secret law as we did. That's what has got to be really tough for the members of the caucus who sit in the Legislature, knowing that they were as well-informed as to what was going on behind the doors of cabinet as we were. I would hope—and I don't have a spy in the Liberal caucus room, but I'll bet you if there was a fly on the wall there was some pretty hot discussion over the issue of informing the backbench members of the party in the Legislature on the bringing in of the Public Works Protection Act to manage the security at G20.

Every one of us is elected by our constituents to do the very same job. We're all MPPs. Some, if you're on the government side, get elevated to the executive council, you become a member of the cabinet. One person, obviously, gets to be the Premier. Whoever is the leader of the party that wins the most seats is the Premier, and then other members could be parliamentary assistants, like we have a parliamentary assistant here today, the member for Scarborough–Agincourt, Ms. Wong. Some people have additional roles, but we're all MPPs.

I think we feel like we're cheated a little bit when we're kept out of the conversation. I'm sure that members of the Liberal caucus felt that way, especially when the proverbial stuff hit the fan, as they say, Chair, during that summer when all of those troubles were going on here in Toronto during the G20.

As I say, I don't hold members of the Liberal caucus individually responsible because I don't think they had any input into the decision. They were simply pawns in the political game that was being played by the McGuinty cabinet, the game being played with the rights of citizens here in the province of Ontario. Of course, that's Caught in the Act.

We had a chance to talk about Caught in the Act in the Legislature. We talked about that during the second reading debate on Bill 34. There was an opportunity to discuss some of the recommendations and the challenges, and I may get into that a little later today, reading some of the passages from Mr. Marin. I think that's part of what I was speaking about this morning, too, the quality of André Marin's work, which is second to none. Boy, we're lucky to have someone like that as our provincial Ombudsman.

We've got this report, Caught in the Act, and now, to the amendment to the motion, yesterday we got this. I had no time to read this during lunch either, and I'm not one of those speed-readers, you know. I can't quite do it that fast. I didn't take that—was it Evelyn Woodhead course there, you know? Speed-reading.

Mr. Shafiq Qaadri: But you can read them?

Mr. John Yakabuski: Oh, I believe I can, yes. The member for Etobicoke North is questioning—I can assure him that I can read.

Mr. Shafiq Qaadri: It's a faculty you seem to exercise so infrequently.

Mr. John Yakabuski: Yes. Well, I do from time to time. Sometimes there's a good comic book out there that I pick up and see if I can get through it, provided none of the words are too challenging, I say to the doctor.

Mr. Lorenzo Berardinetti: John Kennedy was a speed-reader.

Mr. John Yakabuski: John Kennedy was a speed-reader? Yes, but he's dead. Maybe it's not a good idea to read too fast, eh?

So I didn't have time to read the report, but I don't think anybody else did either, because we all have things to do between question period and now. One of them was eat lunch, and we had a House leaders' meeting and stuff like that. I even had to read a schedule there, but I just read it to myself. But I would never have had the time, anyway.

So to the issue at hand: Of course, the question is, we need some time to read the report and I know my colleagues from Bruce–Grey–Owen Sound and Carleton–Mississippi Mills haven't read the report either.

Mr. Bill Walker: Definitely, we haven't had time, and I need to; I'm the new guy.

Mr. John Yakabuski: Well, sure, exactly.

So what we've asked for—and I can confirm that not only can both of my colleagues on this committee read, I just got an email that confirms that all members of our caucus can read, a great news flash there for the member from Etobicoke North.

Mr. Shafiq Qaadri: But do they?

The Chair (Mrs. Laura Albanese): You have a minute and a half to wrap up.

Mr. John Yakabuski: Well, I'm not going to be able to read it in that minute and a half, Madam Chair. I swear to God on that one. But I will get down to it at some point.

So I'm asking for the committee to consider my amendment to my amendment, which is to give us some time, perhaps adjourn the committee until such time as we can digest the report. Am I just about out of time?

The Chair (Mrs. Laura Albanese): Yeah, just about out of time—

Mr. John Yakabuski: I don't want to begin a thought and then not be able to finish it.

The Chair (Mrs. Laura Albanese): There's 45 seconds left, if you wish to add something.

Mr. John Yakabuski: Well, I could just say what a lovely day it is out there. It would be wonderful to adjourn this committee and—

The Chair (Mrs. Laura Albanese): So just to confirm, you have moved to adjourn the committee—

Mr. John Yakabuski: Until such time as we—and I could further—

The Chair (Mrs. Laura Albanese): All you could do right now is move to adjourn the committee.

Mr. John Yakabuski: I have moved to adjourn the committee. We're on further debate for that.

Interjection.

The Chair (Mrs. Laura Albanese): A 20-minute recess. We're recessed.

The committee recessed from 1417 to 1437.

The Chair (Mrs. Laura Albanese): So recess is over. Members should be ready to vote. Mr. Yakabuski has moved committee adjournment, so we'll proceed. I want to remind members to please give me a show of hands.

All those in favour? All those opposed? That being a tie vote, the Chair needs to vote, and the Chair always votes for the extension of debate, maintaining the status quo. So, in this case, the motion is accordingly lost.

Further debate? So it's Mr. MacLaren who wishes to speak on the amendment to the amendment on the motion moved by Ms. Wong in response to the motion moved by Mr. Hillier.

Mr. Jack MacLaren: I would speak in favour of Mr. Yakabuski's motion, that we be given time to review this report on the G20 by the Office of the Independent Police Review Director. I think it's a very important document. I've read many press articles talking glowingly about it, about how it's such a significant document, and I think—

Ms. Soo Wong: Jack, speak into the mike.

Mr. Jack MacLaren: Oh, sorry. Is that a little better? All right.

Mr. John Yakabuski: I know you don't want to miss a word.

Mr. Jack MacLaren: All righty.

Mr. Shafiq Qaadri: Anything you say—

Mr. John Yakabuski: Can be held against you.

Mr. Jack MacLaren: I have the floor, and he still talks.

Interjections.

Mr. John Yakabuski: Sorry. Nobody has unplugged me yet.

Mr. Jack MacLaren: Sorry, John. If I make any mistakes, you'll point them out, right? Okay.

I speak in support of having the time to review this document because I think it is very important; a lot of work has gone into it. It's not the only document that has been made available for this committee's review. There's another one here from the Royal Canadian Mounted Police. I think they're pretty much just reviewing their performance during the G20 and G8 summits. This report isn't saying a heck of a lot except the review comes to the conclusion that, more or less, what they did was okay. That may or may not give us much to chew on or consider for our deliberations over Bill 34. This report from the Office of the Independent Police Review Director, I believe, does.

I think we all take this Bill 34 very seriously, as we should. It basically amounts to a small thing that is the foundation of everything that is good about this country, I believe, and that is our constitutional rights for freedom—freedom of speech, freedom of assembly; the things that define what makes Canada such a great place to be, why we have so many people from various nations come to this land and want to come to this land. We're one of the most stable countries in the world, but basically the foundation of everything that's good here is our democracy, based on the British parliamentary system. You could stretch it right back to the Magna Carta, which isn't a stretch at all—that's exactly where it all started—and with our own constitutional documents, the Charter of Rights and Freedoms. I think sometimes we speak not often of them, and we should. I think we should speak more often of them and learn to have regard for how important they are and how they are the foundation of everything good that is here, and not take that point too lightly, because it is so important.

How that relates to Bill 34, as I see it, is a very direct and obvious relationship, because we're talking about a courtroom. I believe there's the security of a courtroom, but more than that, I think the foundational constitutional freedoms that a courtroom offers and defines: A court or a trial is supposed to be an open, public display of justice, as has been said in a number of documents. I think we've mentioned here already that justice must not only be done but must be seen to be done. So a trial is a public event, as it should be, so that there's nothing behind closed doors, so that everybody can see that justice was done and they can see how it was done, and we need a courtroom as the place for justice to be done and to be seen to be done. Again, this all relates back to our constitutional rights to freedom of assembly.

Now we're talking in Bill 34 about, how do we make the courtroom secure? So I think we've all agreed and understand that it has been defined very clearly that it's a public place for a public event, which is a trial. We want the public to come, to attend and to see justice done. They are invited, they are welcome, and we must be careful as lawmakers—because that's why we are here in this

wonderful institution of the Legislative Assembly of Ontario. It is a great honour to be here. When I was elected last fall, many times it was mentioned to me as we were being introduced to this place and went through the formal steps that go along with becoming an MPP, about what a great honour and a great privilege it is. Really, we are here as nothing but the voice of the people from our ridings and everything we do should be a reflection of their wants and needs, nothing more and nothing less. So we have to keep those kinds of things in mind.

Getting back to courtroom security, this bill calls for what I consider to be some potential infringements on our constitutional rights and our Charter of Rights and Freedoms, where it would say things like, "What is your name? Give us your identification. Tell us why you're here. Let us search your person, your body etc. and your automobile." They sound very simple and could easily be taken as unintrusive, and as I've read through all the documents that were presented to us before this committee started, I started to realize that something that could be viewed as simple, not a particularly big issue or important issue, that in fact it is an extremely important issue and, again, is the very foundation of everything that's good about this country.

So really what we're talking about is the maintenance, understanding and integrity of our rights and freedoms in this country. We want to do that right. I think it's very, very important that we take whatever time is required to do the job right on behalf of our constituents and make sure that in Ontario our constitutional rights and freedoms are held in high regard, that we abide by everything that our forefathers—going back even before Canada—held in regard are abided by and the true nature and intent of everything that was done in 1867 and 1982, 1215, is considered when we make our decisions here on this bill.

This document is something, I believe, that if we do not consider it and take the time to consider it, we are not doing our job completely and comprehensively, and that would be a great mistake and I think we would not be doing our jobs properly or serving the people we represent properly.

As John has mentioned, none of us have had time to go through this in any detail except maybe to read the table of contents, and even if you do that you see there's background; there's the G20 security structure; protests and responses, Saturday, June 26 to early Sunday, June 27; stop and search; Queen's Park activities; arrests on the Esplanade; University of Toronto arrests; Queen and Spadina—I think that's where they did kettling. Can you imagine doing kettling? Isn't that what they did in the Culloden war, John?

The prisoner processing centre, which was very overcrowded, as I understand it; aftermath and reflections; public and the media; training. Those are pretty ominous subtitles: Arrests, arrest, kettling.

I think when we consider that those kind of things happened only two years ago, they happened here in this city, in this country where people's constitutional rights and freedoms were infringed upon in a huge way, which we have never experienced in this country and which we are used to seeing in headlines for other Third World countries—how far are we from being a Third World country? Not far if we make the wrong decisions and we don't do our job right.

We have to be careful to maintain our freedoms. That's what the whole purpose of this committee is: to ensure that we do Bill 34 right, that we provide for securities, security of people in a public place, a courtroom, for the public institution of a trial and that we not infringe upon any of those kinds of freedoms.

A pile of work has gone into this document by the Office of the Independent Police Review Director and I think it would be a grave error on our part if we don't take the time to read that document and see if there's a paragraph, a sentence or a page that would have an impact on what our decision might be, something we haven't thought of. A lot of people have done a lot of work. It took two years to get to the point where they published this document yesterday. Are we going to say we're too far along with our process to take a break, study one more document and make sure we do things right? If we find it doesn't make a difference, at least we can feel good that we took the time to consider what Mr.—

Mr. John Yakabuski: McNeilly.

Mr. Jack MacLaren: —McNeilly did.

Mr. John Yakabuski: Not Phil McNeely.

Mr. Jack MacLaren: Gerry McNeilly. I think for us to not take the time to consider that would really be a bit of a slap in the face for him and the body that he represents and is director of.

The RCMP document: I think we should have a look at that, too. Although I expect, from what I hear, it would be less likely we'd find something that would be of significance there.

Mr. John Yakabuski: On a point of order, Madam Chair.

The Chair (Mrs. Laura Albanese): Yes?

Mr. John Yakabuski: Standing order 23(g): As this bill that we're debating here would replace or nullify—"repeal" would be the word—repeal the Public Works Protection Act, I believe we're in contravention of orders 23(g)(i) and (ii). The fact that a number of people have been charged under this act—those cases are before the courts, there are still some of those cases before the courts. As 23(g)(i) and (g)(ii)—and I'll read them:

"23. In debate, a member shall be called to order by the Speaker if he or she…

"(g) Refers to any matter that is the subject of a proceeding,

"(i) that is pending in a court or before a judge for judicial determination; or

"(ii) that is before any quasi-judicial body constituted by the House or by or under the authority of an act of the Legislature."

We know that the PWPA was an act of the Legislature. Therefore, I request that this committee seek legal

opinion as to whether or not we can be discussing these until such time as those cases have been dealt with by the courts and are no longer the subject of a proceeding, because right now they are. I'd like a view on this, and perhaps we need to get it from some other authority, as to whether or not these proceedings are not in fact in contravention of standing orders 23(g)(i) and (ii).

The Chair (Mrs. Laura Albanese): We'll take a five-minute recess to consider what he just said.

The committee recessed from 1451 to 1501.

The Chair (Mrs. Laura Albanese): I'm ready to rule on the point of order, that is not a point of order, that was brought forward by Mr. Yakabuski. I will say that O'Brien and Bosc, on page 628, states that the sub judice convention "does not apply to legislation or to the legislative process as the right of Parliament to legislate may not be limited."

1500

Mr. John Yakabuski: Where did this come from, Madam Chair?

The Chair (Mrs. Laura Albanese): O'Brien and Bosc. It's not a point of order and there's no debate, so we'll go back to Mr. MacLaren, who was speaking.

Mr. John Yakabuski: Wow. No debate.

The Chair (Mrs. Laura Albanese): There's no debate when it's not a point of order. Mr. MacLaren, would you like to resume?

Mr. Jack MacLaren: Thank you, Madam Chair.

Mr. Lorenzo Berardinetti: Point of order: With the greatest respect, we'd like to have an opportunity—at least I would—to speak to this motion, because it's been mostly—

The Chair (Mrs. Laura Albanese): To which motion?

Mr. John Yakabuski: Well, he's not done his 20 minutes.

Mr. Lorenzo Berardinetti: No, to Mr. Yakabuski's motion. I think it was Mr. Yakabuski's motion.

The Chair (Mrs. Laura Albanese): It wasn't a motion. It was supposedly a point of order.

Mr. Lorenzo Berardinetti: No, his amendment that he introduced today.

The Chair (Mrs. Laura Albanese): Oh, the amendment.

Mr. Lorenzo Berardinetti: We have yet to really talk about the amendment.

The Chair (Mrs. Laura Albanese): Mr. MacLaren had the floor. He had asked for the floor before we even resumed at 2 o'clock, and he should be done momentarily.

Mr. Lorenzo Berardinetti: Chair, another point of order to the clerk: Is it appropriate to go from one member of a party to another member of the same party? Or should rotation allow at least the other parties to speak a little bit to the motion?

The Chair (Mrs. Laura Albanese): No one else had asked for the floor at that time, and Mr. MacLaren had asked for the floor. You can have the floor right after Mr. MacLaren.

Mr. Lorenzo Berardinetti: I honestly thought I did request that earlier, but if not, I'll request it now. I would ask that they let me speak for a bit.

The Chair (Mrs. Laura Albanese): Yes, that's fine.

Mr. John Yakabuski: I'm looking forward to it.

The Chair (Mrs. Laura Albanese): Mr. MacLaren?

Mr. Jack MacLaren: I'm willing to let Mr. Berardinetti have the floor now, if it could come back to me.

The Chair (Mrs. Laura Albanese): Sure, we could do it that way. Okay, Mr. Berardinetti, please proceed. Thank you, Mr. MacLaren.

Mr. Lorenzo Berardinetti: I appreciate the opportunity to speak. I appreciate that the other party, the opposition, was willing to allow me to speak. I just want to go through what's going on here so that—we understand it here, but I want to make sure that it's understood by those that may be watching; there's not many left.

Mr. Jack MacLaren: Could you speak up?

Mr. Lorenzo Berardinetti: I'm sorry. These microphones—

Mr. John Yakabuski: I haven't checked the Neilsen rating, but I doubt that there are millions watching.

Mr. Lorenzo Berardinetti: I don't know how many are watching.

Just to go through this quickly—I'm stuck with a lot of paperwork here, but today's agenda started with Bill 34, which is in front of us today, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012. At 9 a.m., a motion was filed by Mr. Yakabuski—I hope I pronounced that properly—and Ms. Wong, MPP, on May 10, 2012.

Today, an additional motion was filed and I believe that's what we're debating right now. I just want to go—Ms. Wong, do you have a copy of your motion? I'm just looking for it right here, because I had the other motions in front of me. Thank you.

The first motion that was moved on May 10, 2012, moved by Soo Wong, MPP, Scarborough–Agincourt, moved that the committee cease further deliberation of the issue and immediately commence clause-by-clause consideration of Bill 34. That was amended last meeting, last week—seven days ago, I believe it was—by Mr. Yakabuski, and the motion was, I believe, "Once the committee has heard from ministry counsel on the independence of the judiciary, and had the opportunity to question both ministry counsel and legislative research, and is duly satisfied that Bill 34 does not threaten this independence." That motion is an amendment to Ms. Wong's motion, I believe, and that's still on the floor to be debated.

But this morning, we had an additional amendment moved by Mr. Yakabuski—is it Yakabuski or Yakabooshki in pure, native language?

Mr. John Yakabuski: Listen, you people have me so confused I'm not sure anymore, but my dad used to say Yakabuski.

Mr. Lorenzo Berardinetti: Yakabuski.

Mr. John Yakabuski: You know those three letters in the middle there, that b-u-s? I don't know if you've ever ridden on a "boose", but I've certainly ridden on a bus.

Mr. Lorenzo Berardinetti: It's important, because I must be the only elected politician in Ontario who gets elected and no constituents in my riding can pronounce my last name.

Mr. John Yakabuski: Berardinetti.

Mr. Lorenzo Berardinetti: You can. So it's Yakabuski?

Mr. John Yakabuski: Yakabuski.

Mr. Lorenzo Berardinetti: Yakabuski, and I think we put that on the record because—

Mr. John Yakabuski: It's the last name on the ballot.

Mr. Lorenzo Berardinetti: I know, and mine is usually the first on the ballot, so we share opposite ends on there, Mr. Yakabuski.

Mr. John Yakabuski: That's not the only thing that we're at opposite ends on.

Mr. Lorenzo Berardinetti: But we get along.

I apologize, but I think it was important to put that on the record, because when Mel Lastman was mayor, he never pronounced my name properly for six years. So I have a record of no one being able to pronounce it, and I don't mind. It's Berardinetti.

So today, respectfully, Mr. Yakabuski moved a motion to further—

Mr. Bill Walker: An amendment.

Mr. Lorenzo Berardinetti: I'm sorry, an amendment. It says right here, amendment. An amendment to the amendment—no, an amendment to the amendment—

The Chair (Mrs. Laura Albanese): An amendment to the amendment to the motion by Ms. Wong.

Mr. Lorenzo Berardinetti: "And the committee thoroughly reviews the report of the Office of the Independent Police Review Director released May 17, 2012, on the G20 entitled Policing the Right to Protest: G20 Systemic Review Report." We have it in front of us.

I think it was this morning—and I was listening, Mr. Yakabuski—when he stated that this report just came out very recently. Sorry, it's so many pages, I can't even—

Mr. John Yakabuski: It's a very large document.

Mr. Lorenzo Berardinetti: A very large document. As someone who needs reading glasses, I can't read this unless it's made larger for me, but I can do that on my computer at home. I'll just search the item and then ask for larger print type on there.

But I think I understand where he's going on this, and where the others who have spoken to this are going. The bill in front of us is important. The previous act has been in place a long time, and it's worth debating the merits of the previous bill and the merits of the present bill.

Also, regarding Bill 34, there are a number of other motions—they keep growing every time. Some are from the NDP, and I think they're supportable, some are from our party and some are from the Conservative Party.

My wish, and I think the wish of the majority of people here, will be to start working our way through these motions, one by one, and then debating it and voting on them.

As a former Chair of justice policy, I used to have people on the committee like Peter Kormos and a few others who would keep me in place and say, "Let's get to business," and we would get to business quite often. If I strayed as Chair, he'd go "Ahem"—I don't know how Hansard is going to be able to do that—but he used to go, "Ahem. Mr. Chair, you're straying. Let's get down to business." So I'm not accusing anyone—

Interjections.

Mr. Lorenzo Berardinetti: Well, I wanted to speak to Mr. Yakabuski.

The Chair (Mrs. Laura Albanese): Order.

Mr. Lorenzo Berardinetti: I just want to say something.

Mr. John Yakabuski: I apologize. I wasn't interrupting you. I was having a conversation with Ms. Armstrong.

Mr. Lorenzo Berardinetti: It's okay. But I just wanted to say that I think it's important to note that the amendments need to be debated; I agree. The motion by Ms. Wong needs to be debated. They need to be voted on, as well. Then, I hope we can move to Bill 34, because the number of amendments are growing. There are quite a few of them. I've read them. As I said earlier, I think some are supportable, and with the greatest respect to the Conservatives, I like some of the NDP motions. I honestly think they're genuine, good motions, and they improve the bill in front of us today.

Perhaps, if we debate—

Interjection.

Mr. Lorenzo Berardinetti: No, no. I'm speaking objectively and honestly. I've heard good comments, from Mr. MacLaren, I think from last week and from the previous meeting, that make sense, and my colleagues agree here, that perhaps some of the motions from the Conservative Party are supportable, and I'm putting this on the record. So these are worth debating. During each one of them, all parties have a chance to move a 20-minute recess to consider the amendment to the bill and decide which way to vote.

Again, make no mistake, this is an incredibly important piece of legislation. I think Mr. Singh and I—I don't know if anyone else around here is a lawyer, but we've been in court. We've been in and seen situations—

Mr. John Yakabuski: I've been in court.

1510

Mr. Lorenzo Berardinetti: As lawyers representing clients. Our experiences are a bit different. For some reason, whenever I go with a client, they search me as well; maybe they think I'm a criminal. But in any case, I've had experiences. I think we need to talk about that in the course of this debate. I don't think it's going to take one hour to go through this—or two hours or three. It's going to take a long time to go through all the amendments that are in front of us—the amendments to the bill, and the bill itself is a very important piece of legislation.

I understand the reason for the amendments in front of us today. I'm not going to mention Ornge, but I understand the reason for these motions in front of us today, and they are here to make sure that we get this right. I've heard that from the opposition. I've heard it from Mr. MacLaren and from Mr. Yakabuski as well. Maybe, if Mr. Walker speaks, I'm sure we'll hear it from him as well. But we want to get it right because we don't want to be coming back a year later or a year and a half later, having to go through and review a different bill.

All this stems back to the G20 and the incidents that occurred back in Toronto last year. We don't want to see that happening again. The next time, it may not be the G20. It may be the G8 conference, or maybe the meeting of the finance ministers, or maybe the IMF will decide to meet here. I know that people strongly protested when the IMF met. In this day and age, things are different than they were 20 years ago.

The bill that we're debating is a very old bill. It goes back to the 1930s—it was 1939. But we live in an age—10 years ago, there wasn't Facebook. Ten years ago, Yahoo was small. Ten years ago, emails were not what they are today. Ten years ago, Google didn't exist. Twitter didn't exist very long ago. Let's say the IMF comes to Toronto or any part in Ontario. Let's say it comes to Ottawa or even to Mr. Yakabuski's riding, or they decide to hold the G20 at some location there, or the IMF decides to meet there. Someone can show up and say, "These guys, the IMF, have decided to meet here," and just tweet out and say, "Guys, come to Mr. Yakabuski's riding." There must be a location where you could hold a conference in Mr. Yakabuski's riding—

Mr. John Yakabuski: Lots.

Mr. Lorenzo Berardinetti: Yeah. No, but seriously, there must be a location. Sometimes they use good locations that are a bit more remote and that aren't accessible by plane, and they may decide to have it there. So it's tweeted out by someone who doesn't like the IMF: "The IMF is meeting here. We should protest it." It won't take long; the tweet will be re-tweeted—I don't use Twitter but I think I know how it works. So you just re-tweet something again and again. Within a matter of a few minutes, it could reach around the world, and people will start coming to that event. We want the proper rules in place if that event takes place. Back in 1939, when the other bill was introduced—the old bill that is in front of us today—you couldn't do those kind of things. Social media has changed the world drastically. We may have to come back a few years from now if something new comes out—Facebook, Twitter and Google came out recently, and everyone has got some kind of smart phone or an iPhone or a BlackBerry or some kind of device to be able to communicate with not one person but several people. There are many ways to do it. Just imagine, 10 years from now, how many other things will exist that we don't know yet. Who would have thought that you could just send out a message around the world using Twitter? Anyone who's following you can pick that tweet up and then re-tweet it to their contacts, and so on and so forth. That didn't exist in 1939. No one would have believed—probably believed—that we'd have what we have now in place for communications purposes.

Ten years from now, there may be a whole new system in place where more people are notified. The world is changing also—not just the social media. It's also changing with the way it views the World Bank, with the way it views the G20, with the way it views the G8, with the way it views all sorts of organizations. Just say the words "World Bank" and people go crazy over that.

All this is important that's in front of us. But my point is that I think we need to make a start—just to make a start and work through some of the issues here, the constitutional issues that have been mentioned quite well. Mr. MacLaren and Mr. Yakabuski have mentioned them very well, about the constitutional issues, and they're important. But I think we also need to look at other potential issues that can arise.

That being said, I think we need to sink our teeth into this bill and start working on it, get something better than we presently have. We went through second reading debate in the Legislature, then it was referred to the appropriate committee, which is justice policy, where we are today. The job of the standing committee, from what I know, is to review legislation. This is our only chance to make changes to the bill, right here. Then it's sent back to the Legislature for third reading.

I haven't seen very often, during third reading, bills getting amended. However, the House leaders meet and may come to an agreement to send it back to us to continue to debate this issue or to make further amendments. Rarely have I seen a bill come to committee and not be amended.

We know there are going to be changes. I think everyone around this table knows that this bill is going to be changed or amended to some extent. Whether they be minor amendments or major amendments, we don't know. We'll find out during the course of our clause-by-clause reading.

I think it's important to go through the amendments. I don't know how long we're going to talk about the amendments to the amendments that are in front of us today, but my sense is that we need to go forward.

I'm not going to use up the whole time, I just want to make a point today and put it on the record that we want to—I think we want to; I can't speak for all my colleagues, my Liberal colleagues or anyone else here—sink our teeth into this and start working on it. It's not going to be done in an hour; I don't even think it's going to be done in a day. But the amendments should be looked at. They were prepared by all three parties.

If the official opposition is concerned that we're rushing this through and sending it back to the Legislature, I don't think that's the case. We want to go through the amendments, and I can see the other pre-amendments that have been added here and I think—the point I want to make is, let's sink our teeth into the bill and look at the amendments in front of us. That's all I wanted to say. Thank you.

The Chair (Mrs. Laura Albanese): Thank you, Mr. Berardinetti. I will now give the floor back to Mr. MacLaren and, after that, just so that committee members know, Ms. Wong has asked to speak and now Mr. Singh. Mr. MacLaren?

Mr. John Yakabuski: You may never come back to me again.

The Chair (Mrs. Laura Albanese): You'll have to wait your turn, I guess.

Mr. Jack MacLaren: Thank you, Madam Chair. I forget exactly where I left off, but—

Mr. John Yakabuski: Go right back to the start.

Mr. Jack MacLaren: Back to the start. Oh, page 1?

Mr. Shafiq Qaadri: To 1215, the Magna Carta.

Mr. Jack MacLaren: So we're talking about whether we should be reviewing this document. We'll keep our attentions focused on this document from the Office of the Independent Police Review Director, because that is the subject of the amendment to the amendment by Mr. Yakabuski.

I think we could consider that the G20 problem, which highlighted the problem with the legislation, which is the reason why Bill 34 was drafted, was the G20 event two years ago in Toronto. But there could be many areas of concern, especially now that we're talking about courthouses. We have to consider that the security of a courthouse is what we're concerned about, and we have about 140 courthouses around the province of Ontario.

I think it would put us in good stead if we were to consider a courthouse in Alexandria, for instance—very different than kettling at the corner of Spadina and whatever street it was in Toronto where they did the kettlings.

1520

Mr. John Yakabuski: Do you think any of these folks have even been to Alexandria?

Mr. Jack MacLaren: Alexandria's a fairly multicultural place. They're either Scottish or French.

Interjection.

Mr. Jack MacLaren: Sorry, what's that?

The Vice-Chair (Mr. Shafiq Qaadri): Alexandria, Egypt, also.

Mr. Jack MacLaren: Yes, right. Well, that's a different Alexandria. I don't think we—

The Vice-Chair (Mr. Shafiq Qaadri): It's the original one, actually.

Mr. Jack MacLaren: We can't consider that, though.

Mr. John Yakabuski: —jurisdiction there, do we?

Mr. Jack MacLaren: No, we don't. The one in Glengarry is different. But they do have a courthouse there, and there are 140 other courtrooms around the province.

I think we should just think for a second, a moment or even longer about how would Bill 34 work in the courtroom in Alexandria? Would the freedoms and constitutional rights of Canadians in the courtroom in Alexandria be impacted by Bill 34? Of course, the answer is yes, they would. Actually, the answer for a courtroom in Walkerton would also be yes, they would.

Mr. Bill Walker: Owen Sound?

Mr. Jack MacLaren: And Owen Sound. So we have to think of all those things, which only amplifies that we must always consider, first and foremost, that our job here, our great responsibility as MPPs representing the people of our riding, the people of Ontario, in this case in Alexandria and—what was that other place? Not Walkerton—

Mr. Bill Walker: Owen Sound.

Mr. Jack MacLaren: —Owen Sound—that we must consider how these things would impact the rights and freedoms for those people. Therefore, how must we do it right, not just with regard to what happened on the streets of the biggest city in Canada, Toronto, the kettling at the corner of Spadina and that other street—and we're not likely to get kettling in Alexandria or Owen Sound—

Mr. Bill Walker: Or Owen Sound. I hope not.

Mr. Jack MacLaren: No, but people's rights are just as important in Alexandria and Owen Sound as they are at Spadina and that other street.

So in that context, again, we want to get this right. We've got to consider all things important. All things important are not always big, like Spadina and that other street; they could be small, like Alexandria and Owen Sound. A person's constitutional rights to freedom are just as important in Alexandria as they are in Owen Sound, as they are at the corner of Spadina and that other street. For that reason, we cannot assume that if we do it right at the corner of Spadina and that other street, it's going to be right in Alexandria, Owen Sound, Huntsville or any other community across the province of Ontario.

In the interest of making our decisions complete, thorough and correct, I think we are obliged to consider the necessity of considering this document that this amendment is about, which is Policing the Right to Protest: G20 Systemic Review Report done by the Office of the Independent Police Review Director. Actually, I hadn't thoroughly looked at the title of this report, and it's called Policing the Right to Protest. People do have that constitutional right to public assembly and freedom of speech.

Actually, I've had the opportunity in past years with my time with the Ontario Landowners Association to participate in many protests, and we always claimed that we had the constitutional right to protest. In fact, I've been out in front of this very building quite a number of times on my John Deere tractor and in buses and in trucks. Although there was an intimidating foray of horses and police that had their effect on us for sure—and this place, I assure you, is most secure because none of us were going to take on the horses or the policemen.

The key to the title of this report is "the right." Canadians have certain constitutional rights, and one of them is to assemble, to speak and to protest. G20 was an infringement on people's rights and just an amazingly wrongful example of how, even in a wonderful country like Canada, like Ontario, like Toronto, the most advanced city in the country, we can slip into Third-World tactics on the words of a few people: Bill Blair, the chief of police of Toronto's police force, and a handful of three

or four people who were leading the government of the day and made the decision that they should enforce the Public Works Protection Act for that weekend in June 2010. People's rights were gone at the stroke of a pen because of this wrongful legislation enforced with a few wrongful decision-makers who forget the very basic fact and reality, the basis of this great country, that we have constitutional rights and freedom to assemble and speak and, in this case protest, and those people's rights were taken away from them and they were arrested without warrants, held overnight in inappropriate facilities, and there was abuse of law and privilege and people and our constitutional rights.

There are quite a number of articles in the local papers resulting from this document being made public yesterday. There are seven articles in this package that we all got as MPPs this morning, and I think they're quite interesting. "Blindly Following Orders": the Toronto Star. I'd like to read a few words, because it sums things up very appropriately. Here are the first couple of sentences:

"Unlawful arrests. Excessive force. Charter rights infringements. 'Gross violations' of prisoner rights.

"All of these things happened during the G20 two years ago, according to a sweeping new report by the province's police complaints watchdog"—which is this report right here. Contained in here is a summary of what went wrong, and I think this just reinforces the need for this amendment to be passed, that we need to have time to study this report, and in detail, not just a few paragraphs and some newspaper articles; for ourselves, go through here and become aware. This report by Gerry McNeilly took two years to put together. It's very complete, it's very long, and it's focused strictly on the G20 problem on a weekend in Toronto two years ago.

Over 1,100 people were arrested and only 32 have ever been found guilty—so 1,100 people picked up and arrested without warrant because one man with the Toronto police force talked to a couple of people with the government and decided that this was the right thing to do. That's Third-World stuff, and we just can't have that here. I think it's just atrocious. They talk about kettling at the corner of Queen and Spadina. There's that other street.

Mr. Bill Walker: Can we go back and change that record?

Mr. Jack MacLaren: No. I liked it the way it was. Kettling at Queen and Spadina: a mass detention of people held out in the rain for hours without good reason and without warrants.

Here's the Canadian Civil Liberties Association. "The OIPRD report substantiates much of what the Canadian Civil Liberties Association has been alleging for the past two years, said spokesperson Abby Descher." Abby Descher was one of the presenters here about two weeks ago—maybe three weeks ago. I have the highest regard for that organization called the Canadian Civil Liberties Association. They stand up and fight for people's constitutional rights when nobody else will and when often people don't have the financial resources to do so. It's unfortunate that we need to have an organization like that, where people have constitutional rights and we have to have lawyers and courts to fight for them. That should never happen.

Here are a couple of other interesting points that I think are really important, and I'd like to read them very briefly. "In his 300-page report, Gerry McNeilly makes 42 recommendations, including changes in police procedure and tactics and amendments to the Police Services Act." I think that addresses Ms. Wong's comments about the Police Services Act not being involved in this. It certainly is, of course.

Here's a man on the Police Services Board, Alok Mukherjee: "Mukherjee said he did not want to comment on any specific findings" in this report "because he is still awaiting a report from retired judge John W. Morden, who is leading the independent civilian review of the G20." There's another report that's going to be coming out in the very near future, and that's going to be June, so that's only a month away—maybe three weeks. I would say: Why would we not wait for that report? Here is a retired justice who has been hired and is putting out this report, conducted by former Ontario Court of Appeal judge John Morden, by the civilian Toronto Police Services Board.

1530

So we have yet another report coming out that has taken two years to be compiled. This one came out yesterday; we have another one coming out in June, specifically on the very event that triggered Bill 34 to be drafted up and written, and we're going to go ahead because we're in too big a hurry to wait for these reports even when they're sitting on our desks to read them.

Mr. Bill Walker: That wouldn't be responsible, Jack.

Mr. Jack MacLaren: I don't think it would. I think it would be quite embarrassing if it ever became public that these reports were here or coming and we decided that we didn't have the time to consider them and to read them in our deliberations over what is the right thing to do here.

Mr. Bill Walker: Perhaps an amendment to the amendment to the amendment to review that other report would be in order.

Mr. Jack MacLaren: Some of the highlights from this report are—and I'll just read them because this is about the quickest little synopsis of information that's contained in this report that we have.

Planning was incomplete and inadequate, with officer training largely delivered electronically. Out-of-town officers struggled to navigate the city—in other words, they don't know their way around—with one officer resorting to a subway map.

Officers told the Office of the Independent Police Review Director that they were ordered to investigate anyone carrying backpacks, wearing gas masks, balaclavas or bandanas. I didn't realize a backpack could be such a threatening thing.

Though most officers carried out duties in a professional way, numerous others used excessive force, send-

ing a message that violence would be met with violence. At Queen's Park, police used a level of force higher than anything the public had witnessed in Toronto before. That's a pretty powerful statement—never before in Toronto.

So we have our constitutional rights wiped away; so we have police using a level of force never being used in this country before; we have kettling at the corner of Spadina and Queen. That's actually the next comment a little further on: Containment was used as a tactic at least 10 times during G20. On the Esplanade and at Queen and Spadina, the police kettled protesters; in other words, blockaded them into an intersection or an area where they couldn't move, specifically to arrest them, a violation of police policy. High-ranking officers overreacted to riots, viewed protesters as terrorists, were ordered to take back the streets, prompting an almost complete clampdown on all protesters and the massive arrests; in other words, a complete removal of people's constitutional rights.

The prisoner processing centre on Eastern Avenue was poorly planned, designed and operated. This makeshift jail was not prepared for the mass arrests that took place, which led to gross violations of prisoners' rights. Planning gaps were obvious and brought forward to senior management before the summit.

Here's the number of reviews done on the G20: In December 2010, the Ombudsman, André Marin, released a scathing report on the secret fence law, quietly passed using archaic wartime legislation—that would be the Public Works Protection Act. Marin condemned "the 'illegal' regulation as causing the most massive compromise of civil liberties in Canadian history." That is a huge statement: "the most massive compromise of civil liberties in Canadian history." That's got to be an embarrassment to all of us as Canadians, especially to us as legislators and some of us who are part of government, and certainly to those of us in opposition.

In June 2011, the Toronto Police Service's 70-page internal report released by Police Chief Bill Blair showed police were overwhelmed and underprepared to respond to the dynamic situations at the G20.

On May 14, 2012, a long-awaited report from the watchdog of the RCMP concluded that the national police force acted in a "reasonable and appropriate" fashion during G20. That would be this report we have right here. So basically what they're saying is that the RCMP operated in a reasonable and appropriate fashion.

On May 16—which was yesterday—2012, the Office of the Independent Police Review Director released a scathing 300-page report that found police made unlawful arrests, used excessive force and violated protesters' Charter of Rights.

So, even with the Public Works Protection Act in place, which gave them more powers, they even went beyond that and violated their powers, even that, and made illegal arrests. And then finally, coming up in June, we're going to have another report, the final G20 review ordered by the civilian Toronto Police Services Board, conducted by former Ontario Court of Appeal judge John W. Morden, and it's expected towards the end of June. I would suggest that these reports—and that's the final report.

For the sake of a bit of time, we could have all this information that all these very worthy and capable people have taken two years to put together for the consideration of somebody. And who would the somebodies be? I would suggest that that is us. We are the people who should be considering these reports because we're in the process of drafting up a new law that would replace what we considered to be a wrongful law, that being the Public Works Protection Act. For us to say, "Well, gee, you know, we'd like to have something passed by the end of the first week of June," or "We need to move a little quicker," or "We think we need to hurry up"—I would say that we don't need to hurry up. We need to hurry up and do it right, we need to hurry up and make the right decisions, we need to hurry up and consider these reports that were drafted up by the Office of the Independent Police Review Director that came out yesterday, and we need to be waiting for Mr. Morden's report that's going to come out in June. To not do that, I would say, we're just going with as much evidence as we can collect now, and that's good enough for us. I would say that's a bad decision and that's not good enough for the people who we represent. We can't be doing that kind of thing.

I think, on that note, I will quit. How many more minutes have I got, Madam Chair?

The Chair (Mrs. Laura Albanese): You have less than two.

Mr. Jack MacLaren: Less than two.

Interjection.

Mr. Jack MacLaren: Well, just a minute. Bill, don't interrupt me. This is important.

The Chair (Mrs. Laura Albanese): The member doesn't need to speak for 20 minutes. It's up to 20 minutes.

Interjection: I think he should, though.

Mr. Jack MacLaren: Thank you for those comments, but there are a couple of things I could say.

There are other articles here from the Toronto Star on this G20. Here's the National Post: "No Excuse for Police Breaking the Law." I would agree with that 100%.

Steve Paikin, the reporter from TVO's The Agenda TV show, was arrested and carted away. He watched one of his fellow journalists being held by two policemen by the arms, then punched in the stomach and then elbowed in the back. The policemen said, "Well, he got a little bit lippy"—not good enough.

National Post, the G20 Report: "Two years ago, the streets of Toronto descended into chaos as a small group of ... protesters" were confronted by police, and tremendous aggressions were going on. Here are some of the subtitles: "Rights Violations," "Call for Change," "Unlawful Detentions," "Poor Planning," top orders.

Here's another article by the Globe and Mail: "Scathing Report Brings Out Defensive Police Chief." That is this report, and the police chief is trying to defend his way. I would suggest the police chief hasn't got a leg

to stand on. I would wonder why the powers that be saw fit to leave a man who would do those kinds of unconstitutional things in the top position where he is. I think that's absolutely unacceptable. Kettling: arresting people and putting them in jails that are makeshift jails, that are inadequate, taking away their constitutional rights. None of those things are acceptable in this country.

Here is another article: "Police Not the Only Ones to Blame for Debacle"—

The Chair (Mrs. Laura Albanese): Mr. MacLaren, you have now spoken for 20 minutes, so I'm going to give the floor to Ms. Wong.

Ms. Soo Wong: Thank you, Madam Chair. I'm hearing again what the PC opposition are doing. This is now four consecutive weeks, Madam Chair, that we have one delay strategy after another. I asked the question last week, and Mr. Yakabuski could say that while you have a new sub member—and I was right again: For the last four consecutive weeks, we have a new sub member to this committee from your party. This week, now, we have a new delay tactic, an amendment to an amendment to my original motion with regard to Bill 34 in terms of clause-by-clause review.

Now the delay this week is to review the police review director's report that was released yesterday. I also heard Mr. MacLaren's comment just now: "Let's wait until the end of June because there will be another report."

Last week, the delay was that we didn't receive the sub member. Mr. Clark was here and he indicated that he didn't get a chance or an opportunity to read Ms. Hindle's report, if my recollection is correct. So there is a consistent pattern of the opposition members to use this kind of strategy to delay the process of this committee.

1540

I do respect the comment Mr. MacLaren made about the timeliness and the careful review of the law, which is absolutely correct. I'd certainly value your comments, Mr. MacLaren. I also heard you very clearly about the value of and respect for the federal Charter of Rights, and that is absolutely correct. As a new Canadian, one of the reasons my family came to Canada is the Charter of Rights. It's unfortunate that your party, both federally and provincially, is not acknowledging this charter and what it means to new Canadians like my family. That charter is what we all must protect every step of the way.

I certainly respect the ability for all of us to have a timely review. But there comes a point when all of us have to do the right thing to make sure to pass this bill, whatever the bill looks like, to do the right thing to address those concerns raised by the Honourable Mr. McMurtry. The question that has to be asked, Madam Chair, is: When will that time be?

I could tell you right now, this fall there are a couple of very large conferences in Toronto. I'm not sure my colleagues from the opposite parties have spoken to those who came to visit us recently from the tourism industry. A big conference from Microsoft is going to be here this fall. Any of these big, international conferences can go astray, as you all can imagine.

Where I come from in the health care sector—and Dr. Qaadri can say the same thing—we must make sure of timeliness, Madam Chair.

At the end of the day, while I respect Mr. Yakabuski's amendment to the amendment motion, there comes a point that we must serve this Ontarian family; the taxpayers must be respected. I'm continuously hearing the tactics and frustration of this committee by using this amendment to the amendment, and when we adjourn next week for our constituency week, someone's going to come back with another amendment to the amendment of the amendment.

So the question has to be asked: What is the intent of the PC Party? Do they really, sincerely believe in having this bill before this committee? Do they really respect the taxpayers of Ontario? And most importantly, do they really want to have this Bill 34 pass in this lifetime?

So again, Madam Chair, I am going to move my motion that was already tabled, and I would like to ask for the question to be voted on. So one way or the other—

Mr. John Yakabuski: That would be out of order.

Ms. Soo Wong: I'm happy to re-record it. But the key piece here is, I do understand the concern about these reports coming forward, but there comes a point that I need to hear from my colleague opposite: When do you prepare—because, where I come from in the health care sector, the eight rights in terms of patient care must include timeliness.

You can delay and delay, but I need to report back to my constituents and the people of Ontario. When does this government, when does the Parliament, want to pass Bill 34? We've now been delayed four consecutive weeks, Madam Chair. So I need to hear, through you to my colleague opposite: When are we going to have this thing forward? Because very clearly it's not going forward because there are these tactics.

So I'm going to ask the question, Madam Chair—I want my motion to be put forth, and if there's going to be an amendment to the amendment to my main motion, let's call the question.

The Chair (Mrs. Laura Albanese): I appreciate your comments and your frustration. However, I do have members that have not had the opportunity to comment on the amendment to the amendment to the main motion that has been put forth by Mr. Yakabuski. I will give the floor to Mr. Singh right now.

Mr. Jagmeet Singh: I just wanted to touch on a couple of points that came up in the report and just to voice some issues that might give us—

The Chair (Mrs. Laura Albanese): Excuse me, Mr. Singh. Could you please speak a little louder, or maybe a little closer to the microphone?

Mr. Jagmeet Singh: Sure. I can speak loud enough without the mike.

I wanted to add my voice to some of the issues that came up in the report very briefly, just to show how some of the issues in the report may assist us. I have the report here on my PlayBook, to plug BlackBerry a little bit.

One of the issues that came up that is very relevant to our discussion is that some of the powers that already exist that are given to police are founded on the Criminal Code of Canada in the common law, as well as the Police Services Act. So we have three different acts at the minimum. There's more. There's also the Trespass to Property Act, which provides some powers to the police. So there's legislation and there's common law that give powers to the police.

Now, in the report, police powers are used—police powers that exist that the report indicates very clearly, and just to cite the report, I'm referring to the Office of the Independent Police Review Director. Police powers that exist were used incorrectly, improperly, and that resulted in violation. In addition to the Public Works Protection Act, in which the province had played a role, there were a number of other factors. And when we talk about giving police additional powers, the trouble is, the report makes it clear that the existing powers are quite broad, and if those powers are used incorrectly, it will result in some serious violations.

Just to give you some specific examples, I'm going to highlight on page 16 of the report, there is a "Framework for Public Protests: Police Powers and Individual Rights." The report goes through the fact that we have a legal authority which comes through such things as the Police Services Act and the Criminal Code, as well as the common law. They talk about the police already having a significant amount of power to prevent—proactive or preventive powers.

My colleague sometimes addresses the issue that we want to give police or security officials the ability to prevent something from happening. Mr. Yakabuski has often indicated his concern about police or security officers preventing a crime before it happens. There is a concept which exists in the Criminal Code which is "preventing breach of the peace." It's cited at page 16 and indicates, "The concept of 'breach of the peace' tends to involve some disturbance or threat or tumultuous riotous activity. The common law also provides a police officer, if he or she honestly and reasonably believes there is a risk of imminent harm, with the power to arrest a person in order to prevent an apprehended breach of the peace."

For example, this could apply in a courthouse without any additional powers, without the PWPA, without the powers that we're proposing; that under the existing framework, the existing powers the police have, if a police officer has reasonable grounds to believe that there is a breach of peace that may occur, he or she can use this power to arrest that individual in reasonable circumstances.

Now, the concern is that if we give an additional power to police officers or security officers to prevent someone from even entering a courthouse based on information they provide, if they provide the information, "I am a member of Greenpeace," and Greenpeace is viewed as an issue to that police officer; if they indicate, "I am a member of the society of people who enjoy protesting," you know, just a make-believe society—the issue is that that organization or that membership in that organization could result in a police officer or a security officer exercising his or her rights in an unfair manner and precluding that person's entry.

So to give that additional power is unnecessary if our goal is proactive for preventive powers. They exist already. They exist in the form of the Criminal Code of Canada, the common law powers, as well as the Trespass to Property Act, as well as the Police Services Act.

The report has 42 recommendations in total. In the recommendations, one of the issues that comes up is that recommendation 12 is training. The report indicates very clearly, police "were not properly trained," police who have already gone through their training, have gone through their licensing, have become police officers. On a systemic level, not one or two bad apples but on a police-force-wide level, there was such a number of violations that it wasn't just one or two police officers who were acting rogue; there was a systematic problem with knowing what the proper powers were and how to execute those powers.

1550

Number 12 indicates that "Police services should review and revise specific training regarding the policing of large protests and applicable police powers. This training should be implemented as part of the general continuing education of officers. The training should include a clear understanding of parameters of a legal protest and the rights of protesters. Although police must train and be prepared for possible violence, training should not depict all protesters as violent and confrontational."

So, the police, in the report, basically took upon themselves to use excessive force, to use unlawful detention and unlawful arrest, issues that they should already have known, as a part of their training—that that's simply unlawful, that it's simply excessive to use that much force. Again, it ties into the fact that we're now giving—we're at the precipice of allowing some serious increases in power of security guards and security officers at court facilities that would give them more powers or the same power as a police officer, and we already have examples of police officers misusing their power at the level that it's at. It's very clear in the report that the police officers were—there were numerous examples of unlawful detention and unlawful arrest as well as excessive force being used. So they're breaching charter rights by searching and detaining people for no cause or not a reasonable cause, and they were using excessive force in striking or arresting the protesters.

In the case at hand, the issue is that we don't want to create a climate in the courthouses which reflects all the same problems that occurred during the G20. If we give such a heightened set of powers to security officers who are implementing security at a courthouse and they go beyond searching for weapons and they go beyond the existing police powers, which are preventive—in the fact that if there is someone who is exhibiting threatening or violent behaviour, there are police powers that exist to protect that. If we go beyond that, we create a climate

where people will not feel comfortable going to courthouses, and that will undermine the concept of a free and democratic society where there are open, transparent and public courthouses.

So we should be cognizant of some of these recommendations which apply very well to the case at hand.

The Chair (Mrs. Laura Albanese): Well, thank you very much, Mr. Singh. I now have Mr. MacLaren who has asked to—

Mr. Jack MacLaren: Madam Chair, I think I'll pass on my comments. I've rethought my situation. We'll just pass it over to Mr. Walker.

The Chair (Mrs. Laura Albanese): Okay. Mr. Walker had asked to speak. Please proceed.

Mr. Bill Walker: Thank you, Madam Chair. It's a pleasure to actually speak to this committee. As a new member just elected in October, everything I'm doing is a brand new learning experience, and I think it's a great opportunity—

Mr. John Yakabuski: You're doing a great job.

Mr. Bill Walker: Thank you very much, Mr. Yakabuski.

I think it's great to be able to be here and learn, and I take those responsibilities very, very responsibly. Looking at what we're doing today, it would not be responsible to make decisions, particularly as a new member, without reading all of the available documentation. In fact, it would be incomprehensible for me, I think, to have commissioned such a study—a 300-page study—and then not even take the time to read it before we move on to have true deliberation and debate on such an item.

I'm a person who believes, when I came to these very hallowed halls of the Legislature of Ontario, that I have to come prepared and I have to understand the facts before I would make any kind of judgment on such a significant change. I remember debating this in the House a little bit. When you invoke the War Measures Act for something such as the G20, I can just not fathom that—that you could even put those two things in the same mindset.

When I read the title of this, this is to amend the Police Services Act. My colleague Ms. Wong suggested earlier that the police services was kind of separate from this. Well, I find it hard to separate them. I think we need to really look at this in depth and ensure that we do understand all of the information. Mr. MacLaren, my colleague, suggested there is this RCMP study; we now have this study. Why would we waste the resources of Ontario taxpayers? Listen, I don't want to get into an overly partisan thing and bring up things like the gas plants in Oakville and Mississauga. I don't want to bring up eHealth. I don't want to bring up Ornge or any of those type of things, but there's a significant amount of waste out there—billions and billions of dollars that are being wasted, that could be going into what they always purport to be health care and education.

Here's yet another study—and I can only dream what the cost of this 300-page study is. Just the photocopying today alone for this is a significant cost. I think we need to make sure that we always take time—and I am filling in. Ms. Wong suggested that maybe—I don't think she was implying that as a subbed committee member, I was coming here to subvert these proceedings. In fact, I hope not because I came here filling in for a colleague who had another legislative duty. I thought it was my responsibility to sit in and learn more about this because we are here and we're charged with governing, to put in good legislation; that we're not going to have to come back and be embarrassed like we were with this G20 summit.

I have to say that it's very staggering to feel that we are in a country such as Canada and people's constitutional rights and freedoms would be trampled by the very police that we believe are there to protect and keep us safe.

We've talked a little bit in this bill about the Police Services Act and the court security and, again, to my colleague Mr. Singh's recent comments, people need to feel comfortable that they're walking into a court of law and have those rights and freedoms. We have to be very cautious, otherwise we'll be putting in legislation like the Green Energy Act, which we can all see now has been nothing but a nightmare for the people of Ontario and is not producing the things that they suggested it would.

Mr. MacLaren, my colleague, spoke very eloquently and I would suggest to him that perhaps the parable of the tortoise and the hare is appropriate. We can't rush headlong into these things just because there's a deadline, just because we want to be able to run out and say we got this bill passed and that was a ticking-box exercise so I can run back to my constituents and say—no, folks, we have to do this with a very measured, deliberate thought process. We have to take the time and do due diligence. We have to make sure that we utilize every asset available to us to make the legislation so we don't come back in a year and have to rewrite it and spend more and more time wasting time and the very precious human resources that we all bring to this table.

I've got some experience working in a nuclear facility. Again, I think we have to be very, very cautious there. Definitely, you need the safety aspect. Definitely, you need to ensure that those facilities have some parameters and some guidelines. But we can't overburden and regulate so heavily that we impede progress. Again, as a new member of this Legislature, I'm seeing that there's more regulation and more regulation and more regulation. We've almost put businesses out of business because they have to stop and be regulated so much. When we're doing this, we have to use a lot of deliberate conscience and we have to take time to—and I think the more people around the table—I think that it's good that you've had some subbed committee members each week because then you're getting a divergent thought process brought to the table, new ideas—

Mr. John Yakabuski: I'm a sub myself.

Mr. Bill Walker: You're a sub yourself, Mr. Yak, and a fine sub at that, I would suggest.

Mr. John Yakabuski: I appreciate the comment.

Mr. Bill Walker: My mother always taught me the principle of learning from your mistakes, and you need to know what the mistake was and learn from your past.

We've sent out Mr. Gerry McNeilly, the independent police review director, to create what I trust will be a comprehensive document—the Office of the Independent Police Review Director, Policing the Right to Protest: G20 Systemic Review Report. I think it's only good due diligence.

Mr. Jagmeet Singh: I apologize. I don't mean to interrupt my colleague; I just, for personal reasons, need to take a 20-minute recess. Is that okay at this point?

Mr. Bill Walker: I'm fine with that, Mr. Singh.

Mr. Jagmeet Singh: I just have to deal with something very briefly. A little situation came up. My apologies.

Mr. Bill Walker: We're good with that. We work in the spirit of co-operation.

The Chair (Mrs. Laura Albanese): Is there agreement?

Ms. Soo Wong: We'll be supportive.

Mr. Shafiq Qaadri: You don't need agreement.

The Chair (Mrs. Laura Albanese): I'm told by the clerk that we do. Thank you. We will recess for 20 minutes.

The committee recessed from 1600 to 1622.

The Chair (Mrs. Laura Albanese): So we are back.

Mr. John Yakabuski: Madam Chair—

The Chair (Mrs. Laura Albanese): Yes?

Mr. John Yakabuski: I would seek unanimous consent to withdraw my amendment to the amendment.

The Chair (Mrs. Laura Albanese): Is that agreed? Agreed. So that motion is withdrawn.

Mr. John Yakabuski: Chair, I would further seek unanimous consent to withdraw my amendment to the motion.

The Chair (Mrs. Laura Albanese): Your amendment to the main motion. Is that agreed? So the amendment to the main motion is withdrawn.

Mr. John Yakabuski: Chair, I would move adjournment of the committee.

Ms. Soo Wong: Before we do, can I—

Mr. John Yakabuski: No, I don't think you can—

The Chair (Mrs. Laura Albanese): There's no comment when there is a motion to adjourn.

Mr. John Yakabuski: It's not allowed.

The Chair (Mrs. Laura Albanese): So is that agreed?

Interjection: Agreed.

Mr. Lorenzo Berardinetti: But the motion moved by—

The Chair (Mrs. Laura Albanese): The original motion is still on the floor. It still stands.

Ms. Soo Wong: Are we going to vote on that?

The Chair (Mrs. Laura Albanese): On the adjournment? No. Either you are in favour of the adjournment or you're opposed. All those in favour? It carries.

The committee is adjourned, and we're back on Thursday after constituency week.

The committee adjourned at 1624.

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Official Report of Debates (Hansard)

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Journal des débats (Hansard)

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Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2012

Comité permanent de la justice

Loi de 2012 sur la sécurité des tribunaux, des centrales électriques et des installations nucléaires

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Clerk: William Short

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 31 May 2012

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 31 mai 2012

The committee met at 0905 in committee room 1.

SECURITY FOR COURTS, ELECTRICITY GENERATING FACILITIES AND NUCLEAR FACILITIES ACT, 2012

LOI DE 2012 SUR LA SÉCURITÉ DES TRIBUNAUX, DES CENTRALES ÉLECTRIQUES ET DES INSTALLATIONS NUCLÉAIRES

Consideration of the following bill:

Bill 34, An Act to repeal the Public Works Protection Act, amend the Police Services Act with respect to court security and enact the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012 / Projet de loi 34, Loi abrogeant la Loi sur la protection des ouvrages publics, modifiant la Loi sur les services policiers en ce qui concerne la sécurité des tribunaux et édictant la Loi de 2012 sur la sécurité des centrales électriques et des installations nucléaires.

The Chair (Mrs. Laura Albanese): Good morning, all members of the Standing Committee on Justice Policy. We're here again, and we have on the table a motion that was moved on May 10 by Ms. Wong that reads as follows: "I move that the committee cease further deliberation of the issue and immediately commence clause-by-clause consideration of Bill 34."

Yes, Ms. Wong.

Ms. Soo Wong: Madam Chair, I'd like to speak about this motion. Just to go back to where we started back in May, we've been at this committee now for over a month, ready to work for Ontarians, ensuring that we have the best possible security legislation for this province, for the people of Ontario. I know that staff has worked really hard—the support staff, our ministry staff—working very hard, and the challenges continue to be in the past. As I say, in the past was the bell ringing and obstructing the work of this committee, so hopefully today we will be ready to work with each other.

I'm prepared—I want to put my colleagues on notice—to withdraw my original amendment, because we know that all three parties' House leaders met yesterday. In the spirit of the House leaders' work and in respect for their work, I am prepared to withdraw my original motion that was set forth on May 10. But I'm still encouraging and requesting our committee, working together, to go through clause-by-clause.

I am on record to withdraw my initial motion that was set forth, that was submitted and tabled on May 10.

The Chair (Mrs. Laura Albanese): Any debate, further—

Mr. John Yakabuski: No.

The Chair (Mrs. Laura Albanese): Any comments?

Mr. John Yakabuski: We agree.

The Chair (Mrs. Laura Albanese): So this motion is withdrawn.

Mr. John Yakabuski: Madam Chair, in light of the motion by Ms. Wong, I would request a 15-minute recess so I can discuss this with members of my caucus as well.

The Chair (Mrs. Laura Albanese): Mr. Yakabuski has requested a 15-minute recess. Agreed? Agreed.

The committee recessed from 0908 to 0939.

The Chair (Mrs. Laura Albanese): We're back. Just to resume where we're at: Ms. Wong has withdrawn her motion, and I assume we're ready to move into clause-by-clause of Bill 34. I would remind all members that it's very important to give me a show of hands as you're voting.

The first thing we will do is ask for unanimous consent to stand down sections 1, 2 and 3 of the bill so that we can deal with the schedules. Do we have unanimous consent? Agreed.

We'll start with schedule 1, section 1. There are no amendments. Shall schedule 1, section 1, carry? Carried.

Shall schedule 1, section 2, carry? Carried.

Shall schedule 1 carry? All those in favour? Carried.

We're now moving to schedule 2. There is an NDP amendment 0.1.

Mr. Paul Miller: Madam Chair, we withdraw that.

The Chair (Mrs. Laura Albanese): That's withdrawn.

So we're now on schedule 2, section 1. We have a Liberal motion, a government motion. Ms. Wong?

Ms. Soo Wong: Madam Chair, I move that the following provisions of the Police Services Act, as set out in section 1 of schedule 2 to the bill, be amended by striking out "to produce identification" wherever it appears and substituting in each case "to identify himself or herself":

(1) Subparagraph 1(i) of subsection 138(1).

(2) Subparagraph 4(i) of subsection 138(1).

(3) Subparagraph 5(i) of subsection 138(1).

(4) Clause 138(2)(a).

(5) Clause 139(1)(a).

The Chair (Mrs. Laura Albanese): Thank you. Any debate? Seeing none, all those in favour? Carried.

Next, an NDP motion.

Mr. Paul Miller: Madam Chair, I move that paragraph 1 of subsection 138(1) of the Police Services Act, as set out in section 1 of schedule 2 of the bill, be struck out.

The Chair (Mrs. Laura Albanese): Any comments? Seeing none, all those in favour? A show of hands, please. Opposed? That's lost.

We'll move on to government motion 138—oh, yes. The page number is 2.

Ms. Soo Wong: Section 1 and schedule 2, Madam Chair?

The Chair (Mrs. Laura Albanese): Yes.

Ms. Soo Wong: Madam Chair, I move that subparagraph 2(ii) of subsection 138(1) of the Police Services Act, as set out in section 1 of schedule 2 to the bill, be struck out and the following substituted:

"(ii) any vehicle that the person is driving, or in which the person is a passenger, while the person is on, entering or attempting to enter premises where court proceedings are conducted, and"

The Chair (Mrs. Laura Albanese): Thank you. Any comments? Seeing none, all those in favour? Opposed? Carried.

We now have NDP motion 2.1. Mr. Miller?

Mr. Paul Miller: Thank you. I move that paragraph 2 of subsection 138(1) of the Police Services Act, as set out in section 1 of schedule 2 to the bill, be struck out and the following substituted:

"2. Search, without warrant, a person who is entering or attempting to enter premises where court proceedings are conducted or who is on such premises in order to determine whether the person has in his or her custody or care a weapon as defined in the Criminal Code (Canada)."

The Chair (Mrs. Laura Albanese): Any comment?

Mr. Paul Miller: It's pretty self-explanatory.

The Chair (Mrs. Laura Albanese): All those in favour? Opposed? That's lost.

We'll move on to NDP motion 2.2.

Mr. Paul Miller: I might as well withdraw it.

The Chair (Mrs. Laura Albanese): Withdrawn.

NDP motion 2.3.

Mr. Paul Miller: I move that subparagraph 4(i) of subsection 138(1) of the Police Services Act, as set out in section 1 of schedule 2 to the bill, be struck out and the following substituted:

"(i) if the person refuses to submit to a search under paragraph 2,"

The Chair (Mrs. Laura Albanese): Thank you, Mr. Miller. I have to rule this motion out of order because it is dependent on motion 1.1 that was previously lost. That's out of order.

Mr. Paul Miller: Madam Chair, we lost 1.1, so why can't we submit this one?

The Chair (Mrs. Laura Albanese): This is submitted, but it's out of order because it was dependent on 1.1 carrying.

Mr. Paul Miller: I'd like an explanation of that, please—"dependent on 1.1."

The Chair (Mrs. Laura Albanese): It was dependent on 1.1 carrying, the previous motion that you presented.

Mr. Paul Miller: I understand that, but why was it dependent on 1.1?

The Chair (Mrs. Laura Albanese): We'll have legislative counsel explain that.

Ms. Tamara Kuzyk: The amendment set out in motion 2.3 is completely consequential on the amendment that's made by motion 1.1. It removes reference in that subclause to the production of identification, which was going to be removed by 1.1, but since 1.1 was lost, you don't want to lose it in 2.3. You need to retain it now, wherever it remains in the act.

Mr. Paul Miller: Okay. Thank you.

The Chair (Mrs. Laura Albanese): So now we'll move on to motion 2.4, NDP motion.

Mr. Paul Miller: I'm assuming this has to be withdrawn too?

The Chair (Mrs. Laura Albanese): You can still move the motion if you wish. It will be ruled out of order.

Mr. Paul Miller: Okay, we'll move the motion.

I move that subparagraph 5(i) of subsection 138(1) of the Police Services Act, as set out in section 1 of schedule 2 to the bill, be struck out and the following substituted:

"i. if the person refuses to submit to a search under paragraph 2,"

The Chair (Mrs. Laura Albanese): Thank you. This one is also ruled out of order because it is consequent to 1.1, which was lost.

We're now on NDP motion 2.5.

Mr. Paul Miller: I move that section 138 of the Police Services Act, as set out in section 1 of schedule 2 to the bill, be amended by adding the following subsection:

"Search to be minimally intrusive

"(1.1) Searches carried out under subsection (1) shall be conducted in a minimally intrusive manner."

The Chair (Mrs. Laura Albanese): Any comment? Seeing none, all those in favour? Opposed? The motion is lost.

We'll now move on to government motion number 3. Ms. Wong.

Ms. Soo Wong: I move that the following provisions of the Police Services Act, as set out in section 1 of schedule 2 to the bill, be amended by striking out "without producing the identification" wherever it appears and substituting in each case "without identifying himself or herself":

1. Clause 138(2)(a).

2. Clause 139(1)(a).

The Chair (Mrs. Laura Albanese): Thank you. Any comments? Mr. Miller.

Mr. Paul Miller: I'd like further explanation on this one, please.

Ms. Soo Wong: With regard to the amendment that we're asking for, we revert the power to request identification closer to the language in the public services protection act; for example, changing "without producing the identification" to "without identifying himself or herself." This change will be made wherever "without producing the identification" is referenced in the bill. The power to request identification is currently read in the context of reasonableness. It may be required by the court security personnel to ask for identification—for example, to vet the attendees. When you vet attendees, you act against a list of known threats, so you have to ask that lawyers also produce identification in order to bypass the search. We made this amendment so that it provides greater security for the courthouse.

The Chair (Mrs. Laura Albanese): Thank you. Any further debate on that? Seeing none, I would seek to see who's in favour. All those in favour? Carried.

We now move to NDP motion 3.1.

Ms. Teresa J. Armstrong: I move that clause 138(2)(a) of the Police Services Act, as set out in section 1 of schedule 2 to the bill, be struck out.

The Chair (Mrs. Laura Albanese): Thank you, Ms. Armstrong. This is ruled out of order as the previous ones because it is consequent to motion 1.1 being carried. So that's lost.

We'll move on to NDP motion 3.2.

0950

Ms. Teresa J. Armstrong: I move that section 138 of the Police Services Act, as set out in section 1 of schedule 2 to the bill, be amended by adding the following subsection:

"Reasonable accommodation

"(6) In exercising the powers conferred by this section, reasonable accommodation shall be made with respect to a person's religious beliefs or in relation to the needs of a person with a disability."

The Chair (Mrs. Laura Albanese): Any comments? Seeing none, all those in favour? Carried.

We'll now move to NDP motion 3.3. Ms. Armstrong.

Ms. Teresa J. Armstrong: I wish to withdraw.

The Chair (Mrs. Laura Albanese): You wish to withdraw?

Ms. Teresa J. Armstrong: Yes.

The Chair (Mrs. Laura Albanese): Withdrawn.

We'll move on to NDP motion 3.4.

Mr. Paul Miller: I move that subsection 140(1) of the Police Services Act, as set out in section 1 of schedule 2 to the bill, be struck out and the following substituted:

"No derogation

"Re judicial powers

"140(1) Nothing in this part derogates from or replaces the power of a judge or judicial officer to control court proceedings, or to have unimpeded access to premises where court proceedings are conducted."

The Chair (Mrs. Laura Albanese): Any comments?

Mr. Paul Miller: It's pretty self-explanatory.

The Chair (Mrs. Laura Albanese): All those in favour? Opposed? That is lost.

We'll now consider government motion number 4.

Ms. Soo Wong: I move that section 140 of the Police Services Act, as set out in section 1 of schedule 2 to the bill, be amended by adding the following subsection:

"Privilege preserved

"(3) Nothing in this part shall operate so as to require the disclosure of information that is subject to solicitor-client privilege, litigation privilege or settlement privilege, or permit the review of documents containing such information."

The Chair (Mrs. Laura Albanese): Any comments? Seeing none, all those in favour? Carried.

We'll move on to NDP motion 4.1.

Mr. Paul Miller: I move—

Interjections.

The Chair (Mrs. Laura Albanese): This can be read into the record.

Mr. Paul Miller: Oh, thanks. I appreciate that.

I move that section 140 of the Police Services Act, as set out in section 1 of schedule 2 to the bill, be amended by adding the following subsection:

"Privilege preserved

"(3) Nothing in this part shall operate so as to require the disclosure of information that is subject to solicitor-client privilege, litigation privilege or settlement privilege, or permit the review of documents containing such information."

The Chair (Mrs. Laura Albanese): Thank you, Mr. Miller. This is identical to the motion that was just carried and therefore ruled out of order.

We'll move to government motion number 5. Ms. Wong.

Ms. Soo Wong: I move that section 1 of schedule 2 to the bill be amended by adding the following section to the Police Services Act:

"Regulations, court security powers

"141(1) The Lieutenant Governor in Council may make regulations respecting the exercise of the powers conferred by section 138 for the purposes of safeguarding the rights and freedoms guaranteed by the Canadian Charter of Rights and Freedoms and the Human Rights Code and, without limiting the generality of the foregoing, the regulations may provide for the accommodation of persons on the basis of creed or disability.

"Same

"(2) A regulation made under subsection (1) may be general or particular in its application."

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Carried.

We'll consider now NDP motion 5.1.

Mr. Paul Miller: I move that section 1 of schedule 2 to the bill be amended by adding the following section to the Police Services Act:

"Regulations, search powers

"141. The Lieutenant Governor in Council may make regulations governing the exercise of the powers conferred by section 138, including imposing restrictions,

limitations and conditions on the exercise of those powers."

The Chair (Mrs. Laura Albanese): Any comments? Seeing none, all those in favour? Carried.

We'll now consider NDP motion 5.2.

Mr. Paul Miller: I move that section 1 of schedule 2 to the bill be amended by adding the following section to the Police Services Act:

"Regulations, reasonable accommodation

"142. The Lieutenant Governor in Council may make regulations governing the accommodation of religious beliefs and the needs of persons with a disability in relation to the exercise of the powers conferred by section 138."

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Carried.

We'll now consider NDP motion 5.3.

Mr. Paul Miller: I move that section 1 of schedule 2 to the bill be amended by adding the following section to the Police Services Act:

"Regulations, access by legal counsel

"143. The Lieutenant Governor in Council may make regulations governing the expedited access by persons who provide identification indicating that they are legal counsel or paralegals to premises where court proceedings are conducted, including providing that one or more provisions of this part do not apply, or apply with specified modifications, in respect of such persons."

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed. The motion is lost.

We'll now consider NDP motion 5.4.

Mr. Paul Miller: I move that section 1 of schedule 2 to the bill be amended by adding the following section to the Police Services Act:

"Regulations, general or particular

"144. A regulation made under this part may be general or particular in its application."

The Chair (Mrs. Laura Albanese): Any comments?

Mr. Jack MacLaren: I have a question. Can you explain this?

Mr. Paul Miller: Actually, I really don't have an explanation for this because the person who drafted this is not here. Sorry. It stands alone.

The Chair (Mrs. Laura Albanese): All those in favour, please raise your hand. All those opposed? Carried.

We'll now consider NDP motion 5.4.1.

Mr. Paul Miller: I move that section 1 of schedule 2 to the bill be amended by adding the following section to the Police Services Act:

"Review of act and regulations

"145. A committee of the Legislative Assembly shall begin a review of this part and the regulations made under it no later than two years from the date on which section 1 of schedule 2 to the Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2012 comes into force, and shall, no later than one year after beginning that review, make recommendations to the assembly concerning amendments to this part and the regulations."

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? The motion is lost.

We'll consider NDP motion 5.4.2.

Ms. Teresa J. Armstrong: I move that section 1 of schedule 2 to the bill be amended by adding the following section to the Police Services Act:

"Definition, 'premises where court proceedings are conducted'

"146. In this part, 'premises where court proceedings are conducted' means a building or part of a building used by a court for the purposes of conducting court proceedings."

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Lost.

We'll move on to NDP motion 5.5R.

1000

Mr. Paul Miller: I move that section 1 of schedule 2 to the bill be struck out and the following substituted:

"1. Part X of the Police Services Act is amended by adding the following sections:

"'Weapons prohibited

"'138. No person shall possess a weapon on premises where court proceedings are conducted unless authorized to do so by the regulations or by a security officer.

"'Screening before entry

"'139(1) A security officer may screen a person for weapons before the person enters premises where court proceedings are conducted.

"'Refusal of entry

"'(2) A security officer may refuse a person entry to premises where court proceedings are conducted if the person,

"'(a) refuses to be screened for weapons; or

"'(b) has possession of a weapon and the possession is not authorized by the regulations or by a security officer or is in violation of any prescribed terms or conditions.

"'Screening after entry

"'140(1) A security officer may require a person on premises where court proceedings are conducted to move to a place, on those premises or elsewhere, where screening is routinely conducted, and may screen the person for weapons.

"'Eviction

"'(2) A security officer may evict a person from premises where court proceedings are conducted if the person,

"'(a) refuses to be screened for weapons; or

"'(b) has possession of a weapon and the possession is not authorized by the regulations or by a security officer or is in violation of any prescribed terms or conditions.

"'Screening to be minimally intrusive

"'141. The screening of persons under this part shall be conducted in a minimally intrusive manner.

"'Restricted zones

"'142(1) No person shall enter a restricted zone unless authorized to do so by the regulations.

"'Eviction

"'(2) A security officer may evict a person from a restricted zone if the person is not authorized by the regulations to enter the restricted zone.

"'Reasonable force

"'143. A security officer may use reasonable force in refusing a person entry to premises where court proceedings are conducted or to a restricted zone within those premises, or in evicting a person from premises where court proceedings are conducted or from a restricted zone within those premises, if the security officer first provides a reasonable opportunity for the person to leave.

"'Reasonable accommodation

"'144. In exercising the powers conferred by this part, reasonable accommodation shall be made with respect to a person's religious beliefs or in relation to the needs of a person with a disability.

"'Offences

"'145(1) A person is guilty of an offence if the person,

"'(a) possesses a weapon on premises where court proceedings are conducted and the possession is not authorized by the regulations or by a security officer;

"'(b) enters premises where court proceedings are conducted after a security officer has refused the person entry to those premises;

"'(c) enters premises where court proceedings are conducted after refusing to be screened for weapons by a security officer; or

"'(d) refuses to leave premises where court proceedings are conducted or a restricted zone within those premises when asked to do so by a security officer.

"'Penalty

"'(2) A person who is convicted of an offence under this section is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than 60 days, or to both.

"'No derogation

"'Re judicial powers

"'146(1) Nothing in this part derogates from or replaces the power of a judge or judicial officer to control court proceedings, or to have unimpeded access to premises where court proceedings are conducted.

"'Re powers of persons providing court security

"'(2) Nothing in this part derogates from or replaces any powers that a security officer otherwise has under the law.

"'Privilege preserved

"'(3) Nothing in this part shall operate so as to require the disclosure of information that is subject to solicitor-client privilege, litigation privilege or settlement privilege, or permit the review of documents containing such information.

"'Regulations, court security

"'147(1) The Lieutenant Governor in Council may make regulations,

"'(a) governing the authorization of persons to possess weapons on premises where court proceedings are conducted, including specifying such persons and establishing criteria, such as training requirements and other qualifications, that such persons must meet;

"'(b) respecting the weapons that authorized persons may possess on premises where court proceedings are conducted, including the terms and conditions on which they may possess those weapons;

"'(c) designating parts of premises where court proceedings are conducted as restricted zones;

"'(d) authorizing persons to enter restricted zones;

"'(e) governing the search methods that may be used by security officers to screen persons for weapons, including imposing limitations, conditions and restrictions on the power to conduct searches;

"'(f) governing the accommodation of religious beliefs and the needs of persons with a disability for the purposes of section 144;

"'(g) governing the expedited access by persons who provide identification indicating that they are legal counsel or paralegals to premises where court proceedings are conducted, including providing that one or more provisions of this part do not apply, or apply with specified modifications, in respect of such persons;

"'Same

"'(2) A regulation made under subsection (1) may be general or particular in its application.

"'Review of act and regulations

"'148. A committee of the Legislative Assembly shall begin a review of this part and the regulations made under section 147 no later than two years from the date on which section 1 of schedule 2 to the Security for Courts, Electricity Generating Facilities and Nuclear Facilities Act, 2012 comes into force, and shall, no later than one year after beginning that review, make recommendations to the assembly concerning amendments to this part and the regulations.

"'Definitions

"'149. In this part,

"'"premises where court proceedings are conducted" means a building or part of a building used by a court for the purposes of conducting court proceedings;

"'"restricted zone" means a part of a premises where court proceedings are conducted designated by the regulations as a restricted zone;

"'"screen" means search in accordance with this part and the prescribed methods;

"'"security officer" means a person who is authorized by a board to act in relation to the board's responsibilities under subsection 137(1) or who is authorized by the commissioner to act in relation to the Ontario Provincial Police's responsibilities under subsection 137(2);

"'"weapon" means a weapon as defined in the Criminal Code (Canada).'"

That was a long one.

The Chair (Mrs. Laura Albanese): That was a long one. You deserve a glass of water.

Mr. Paul Miller: I need a drink.

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Lost.

We'll now consider NDP motion 5.5.

Ms. Teresa J. Armstrong: I move that section 1 of schedule 2 to the bill be struck out and the following substituted:

"1. Part X of the Police Services Act is amended by adding the following sections:

"'Weapons prohibited

"'138. No person shall possess a weapon on premises where court proceedings are conducted unless authorized to do so by the regulations or by a security officer.

"'Screening before entry

"'139(1) A security officer may screen a person for weapons before the person enters premises where court proceedings are conducted.

"'Refusal of entry

"'(2) A security officer may refuse a person entry to premises where court proceedings are conducted if the person,

"'(a) refuses to be screened for weapons; or

"'(b) has possession of a weapon and the possession is not authorized by the regulations or by a security officer or is in violation of any prescribed terms or conditions.

"'Screening after entry

"'140.(1) A security officer may require a person on premises where court proceedings are conducted to move to a place, on those premises or elsewhere, where screening is routinely conducted, and may screen the person for weapons.

"'Eviction

"'(2) A security officer may evict a person from premises where court proceedings are conducted if the person,

"'(a) refuses to be screened for weapons; or

"'(b) has possession of a weapon and the possession is not authorized by the regulations or by a security officer or is in violation of any prescribed terms or conditions.

"'Restricted zones

"'141(1) No person shall enter a restricted zone unless authorized to do so by the regulations.

"'Eviction

"'(2) A security officer may evict a person from a restricted zone if the person is not authorized by the regulations to enter the restricted zone.

"'Reasonable force

"'142. A security officer may use reasonable force in refusing a person entry to premises where court proceedings are conducted or to a restricted zone within those premises, or in evicting a person from premises where court proceedings are conducted or from a restricted zone within those premises, if the security officer first provides a reasonable opportunity for the person to leave.

"'Reasonable accommodation

"'143. In exercising the powers conferred by this part, reasonable accommodation shall be made with respect to a person's religious beliefs or in relation to the needs of a person with a disability.

1010

"'Offences

"'144(1) A person is guilty of an offence if the person,

"'(a) possesses a weapon on premises where court proceedings are conducted and the possession is not authorized by the regulations or by a security officer;

"'(b) enters premises where court proceedings are conducted after a security officer has refused the person entry to those premises;

"'(c) enters premises where court proceedings are conducted after refusing to be screened for weapons by a security officer; or

"'(d) refuses to leave premises where court proceedings are conducted or a restricted zone within those premises when asked to do so by a security officer.

"'Penalty

"'(2) A person who is convicted of an offence under this section is liable to a fine of not more than $2,000 or to imprisonment for a term of not more than 60 days, or to both.

"'No derogation

"'Re judicial powers

"'145(1) Nothing in this part derogates from or replaces the powers of a judge or judicial officer to control court proceedings, or to have unimpeded access to premises where court proceedings are conducted.

"'Re powers of persons providing court security

"'(2) Nothing in this part derogates from or replaces any powers that a security officer otherwise has under the law.

"'Privilege preserved

"'(3) Nothing in this part shall operate so as to require the disclosure of information that is subject to solicitor-client privilege, litigation privilege or settlement privilege, or permit the review of documents containing such information.

"'Regulations, court security

"'146(1) The Lieutenant Governor in Council may make regulations,

"'(a) designating buildings, parts of buildings and spaces used by a court as premises where court proceedings are conducted for the purpose of this part;

"'(b) authorizing persons to possess weapons on premises where court proceedings are conducted;

"'(c) respecting criteria to be used in authorizing persons to possess a weapon on premises where court proceedings are conducted;

"'(d) respecting the weapons that authorized persons may possess on premises where court proceedings are conducted, including the terms and conditions on which they may possess those weapons;

"'(e) designating parts of premises where court proceedings are conducted as restricted zones;

"'(f) authorizing persons to enter restricting zones;

"'(g) governing the search methods that may be used by security officers to screen persons for weapons, including imposing limitations, conditions and restrictions on the power to conduct searches;

"'(h) governing the accommodation of religious beliefs and the needs of persons with a disability for the purpose of section 143;

"'(i) governing the expedited access by persons who provide identification indicating that they are legal counsel or paralegals to premises where court proceedings are conducted, including providing that one or more provisions of this part do not apply, or apply with specified modifications, in respect of such persons;

"'(j) limiting the peace officer powers of a security officer.

"'Same

"'(2) A regulation made under subsection (1) may be general or particular in its application.

"'Definitions

"'147. In this part,

"'"premises where court proceedings are conducted" means the building, part of a building, or space used by a court and designated by the regulations as such premises for the purposes of this part;

"'"restricted zone" means a part of premises where court proceedings are conducted designated by the regulations as a restricted zone;

"'"screen" means search in accordance with the prescribed methods;

"'"security officer" means a person who is authorized by a board to act in relation to the board's responsibilities under subsection 137(1) or who is authorized by the commissioner to act in relation to the Ontario Provincial Police's responsibilities under subsection 137(2);

"'"weapon" means a weapon as defined in the Criminal Code (Canada).'"

The Chair (Mrs. Laura Albanese): Thank you, Ms. Armstrong. That was rather lengthy as well. Any comments? All those in favour? Opposed? The motion is lost.

Shall schedule 2, section 1, as amended, carry? Carried.

Shall schedule 2, section 2, carry? Carried.

Shall schedule 2, as amended, carry? Carried.

So we're now on schedule 3, section 1. PC motion 5.5.1.

Mr. John Yakabuski: Thank you, Madam Chair.

I move that subsection 1(1) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by adding the following definition:

"'premises where a restricted access facility is located' means, with respect to a particular restricted access facility, any real property relating to the restricted access facility that is under the direct control of its operator, including any buildings and structures on that property;"

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Carried.

Shall schedule 3, section 1, as amended, carry? Carried.

Shall schedule 3, section 2, carry? Carried.

Shall schedule 3, section 3, carry? Carried.

We'll move on to schedule 3, section 4. PC motion 5.5.2.

Mr. John Yakabuski: I move that paragraph 1 of section 4 of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by striking out "Request" at the beginning of the portion before subparagraph i and substituting "Require".

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Carried.

We'll move on to PC motion 5.5.3.

Mr. John Yakabuski: I move that paragraph 2 of section 4 of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by striking out the portion before subparagraph i and substituting the following:

"2. Search, without warrant,"

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Carried.

We'll move to Liberal motion 6.

Ms. Soo Wong: Madam Chair, I move that subparagraph 2ii of section 4 of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be struck out and the following substituted:

"ii. any vehicle that the person is driving, or in which the person is a passenger, while the person is on, entering or attempting to enter the premises, and"

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Carried.

We'll now move to NDP motion 6.1.

Mr. Paul Miller: I move that paragraph 2 of section 4 of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be struck out and the following substituted:

"2. If the person consents, conduct a search of,

"i. a person who wishes to enter the premises or who is on the premises, in order to determine whether the person has in his or her custody or care a weapon as defined in the Criminal Code (Canada), and

"ii. any vehicle that the person is driving, or in which the person is a passenger, while the person is on, entering or attempting to enter the premises."

The Chair (Mrs. Laura Albanese): Thank you. Any comments?

All those in favour? Opposed? That motion is lost.

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Mr. Paul Miller: Actually, that was a tie. Do you want to do that again?

Interjection.

Mr. Paul Miller: He put his hand up, we did and one over there.

The Chair (Mrs. Laura Albanese): Let's do that again, then.

Mr. Paul Miller: Yes, let's do it again.

The Chair (Mrs. Laura Albanese): All those in favour? Opposed?

Mr. Paul Miller: It's changed now. Okay.

The Chair (Mrs. Laura Albanese): The motion is carried—

Interjection.

The Chair (Mrs. Laura Albanese): Sorry, lost.

Shall schedule 3, section 4, as amended, carry? Carried.

I guess we'll stop here. We do have another five minutes. We could try to go through—we won't finish.

Interjections.

The Chair (Mrs. Laura Albanese): I'm pretty sure. Let's try. PC motion 6.1.1.

Mr. John Yakabuski: I move that clause 5(1)(a) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by striking out "after being requested" at the beginning and substituting "after being required".

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Carried.

PC motion 6.1.2.

Mr. John Yakabuski: I move that clause 5(1)(b) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by striking out "requested to" and substituting "directed to".

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Lost—sorry, carried. I'm getting confused here.

PC motion 6.1.3.

Mr. John Yakabuski: I move that clause 5(1)(d) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by striking out "enters or attempts to enter" at the beginning and substituting "enters, attempts to enter or is found on".

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Carried.

PC motion 6.1.4.

Mr. John Yakabuski: I move that subsection 5(1) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by striking out "or" after clause (d), by adding "or" after clause (e) and by adding the following clause:

"(f) in any other way obstructs or interferes with a peace officer in the exercise of the powers conferred by section 4."

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Carried.

Shall schedule 3, section 5, as amended, carry? Carried.

We'll move on to schedule 3, section 6. PC motion 6.1.5.

Mr. John Yakabuski: I move that clause 6(1)(a) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by striking out "after being requested" at the beginning and substituting "after being required".

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Carried.

PC motion 6.1.6.

Mr. John Yakabuski: I move that clause 6(1)(b) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by striking out "requested to" and substituting "directed to".

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Carried.

PC motion 6.1.7.

Mr. John Yakabuski: I move that clause 6(1)(d) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by striking out "enters or attempts to enter" and substituting "enters, attempts to enter or is found on".

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Carried.

PC motion 6.1.8.

Mr. John Yakabuski: I move that subsection 6(1) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by striking out "or" after clause (d), by adding "or" after clause (e) and by adding the following clause:

"(f) the person in any other way obstructs or interferes with a peace officer in the exercise of the powers conferred by section 4."

The Chair (Mrs. Laura Albanese): Any comments? All those in favour? Opposed? Carried.

Shall schedule 3, section 6, as amended, carry? Carried.

And now we'll have to stop. The committee is recessed until 2 p.m. this afternoon.

The committee recessed from 1025 to 1402.

The Vice-Chair (Mr. Shafiq Qaadri): J'appelle à l'ordre cette séance du Comité permanent de la justice.

We'll start with schedule 3, section 6.1, which is a new section, for which purpose I invite the honourable Mr. Miller of the NDP to present.

Mr. Paul Miller: I move that the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by adding the following section:

"Reasonable accommodation

"6.1 In exercising the powers conferred under this act, reasonable accommodation shall be made with respect to a person's religious beliefs or in relation to the needs of a person with a disability."

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. If there is any commentary before we proceed to the vote? Mr. Singh.

Mr. Jagmeet Singh: With respect to a similar amendment that was passed for court security in a courthouse, similarly, there are accommodations for people who are either part of a guided tour or attending for any other purpose that's already deemed legitimate; that reasonable accommodation is made if they're a disabled person or if they have a particular head covering or article of faith that they carry; and that those tasked with the security in terms of searching would ensure that there is a reasonable

accommodation made for whatever that particular practice is so that, if they were attending or an employee or entering, they wouldn't be precluded based on the search provisions.

The Vice-Chair (Mr. Shafiq Qaadri): Merci pour vos remarques. Are there any further comments before? Ms. Wong.

Ms. Soo Wong: I want to make sure the committee recognizes that the facilities that we're talking about are actually critical infrastructure for the government. These are not open to the public, and they're quite different in terms of standards of protection. As we probably all know, the Human Rights Code and the Canadian Charter of Rights and Freedoms already provides some legal framework for diversity and human rights. It is not clear how the proposed amendment will work within this existing framework. In some ways, it's more narrowing; for example, it limits to religious beliefs or disability, and it may in other contexts be read in a way that limits or weakens the security of nuclear electricity-generating facilities. There are concerns that the proposal will go beyond articles of faith, like clothing covering the whole body. The existing regulation-making authority in Bill 34 would address accommodation requirements.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Ms. Wong. Are there any further comments on NDP motion 6.2 before we proceed to the vote?

Mr. Jagmeet Singh: Sure. Just to address Ms. Wong's comments, the issue of security, the issue of sensitivity, the issue of an electricity-producing facility being something of integral infrastructure is, of course, noted. There is no way that a reasonable accommodation would in any way infringe our ability to protect a facility. If there's a weapon, if there's an explosive device, if there's anything that's concealed—all those elements can still be covered by searching a person, by going through a metal detector or by going through any other means that the act has already provided for. There are many, many ways to protect security. This is just recognizing that there should be some reasonable accommodation.

Now, "reasonable" means that it should be within reason—that it doesn't harm anyone, doesn't cause any danger, doesn't cause any threat. There should be an accommodation made for people, whatever their issues are, whether it's religious or a disability concern.

That in no way would limit your ability to keep the premises secure. There's nothing in it that would stop that.

In addition, it would go hand in hand with any existing constitutional rights or any existing human rights coda. There's nothing in the wording that would stop it. Because it's a reasonable accommodation, that clause, in and of itself, is a very broad consideration. It doesn't narrow anything, and it wouldn't contravene or contradict any other existing protection under the human rights regime or under any constitutional regime.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Singh. Yes, Mr. Miller.

Mr. Paul Miller: I'd like a recorded vote on this, please.

The Vice-Chair (Mr. Shafiq Qaadri): Recorded vote. We would invite members to please enthusiastically show their hands for that purpose.

Ayes

MacLaren, Paul Miller, Singh.

Nays

Berardinetti, Jaczek, Milligan, Wong, Yakabuski.

The Vice-Chair (Mr. Shafiq Qaadri): Regrettably, NDP motion 6.2 is lost.

We'll now proceed to schedule 3, section 7, PC motion 6.2.1, for which purpose I invite Mr. Yakabuski.

Mr. John Yakabuski: I move that clause 7(1)(c) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be struck out.

The Vice-Chair (Mr. Shafiq Qaadri): The floor is open to comments before we proceed to the vote. Mr. Miller.

Mr. Paul Miller: I'd like further clarification, please.

The Vice-Chair (Mr. Shafiq Qaadri): We await further clarification. Do you address that to anyone in particular—to the presenter or to legislative counsel?

Mr. Paul Miller: To Mr. Yakabuski.

The Vice-Chair (Mr. Shafiq Qaadri): Mr. Yakabuski.

Mr. John Yakabuski: This change will eliminate the ability to define the extent of the premises through regulation. It's complementary to 5.5.1, which was done earlier, with the legislated definition of "premises," and it ensures that the premises cannot be extended beyond the facility perimeter through regulation.

The Vice-Chair (Mr. Shafiq Qaadri): The explanation is satisfactory, Mr. Miller?

Mr. Paul Miller: I heard it. I don't know if it's satisfactory.

Laughter.

The Vice-Chair (Mr. Shafiq Qaadri): All right. Mr. Singh.

Mr. Jagmeet Singh: If I could just ask, perhaps, legislative counsel to comment on that, on the motion that was passed that describes what the premises is. If the premises are described by legislation, would this regulation be able to expand the definition of "premises" so that it could be more than what is legislated, and what would that impact be?

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. A question on "premises" for legislative counsel.

Ms. Tamara Kuzyk: PC motion 5.5.1 creates a static definition of what "premises" is. To be sure, there might be expansion or contraction of that through interpretation in the courts. What PC motion 6.2.1 does is, if carried, get rid of the ability to further define or delineate "premises" by way of regulation. By carrying both, if that were what would happen, you'd be getting rid of

prescribed concepts of premises and replacing them with static concepts of premises in the act, which would require, obviously, a legislative amendment, then.

But in terms of how premises are actually defined, that would be for the courts. That would be—

Mr. Jagmeet Singh: Just to clarify one further thing: If you could just clarify the way "premises" is defined now with the motion that was passed.

Ms. Tamara Kuzyk: You mean read out motion 5.5.1?

Mr. Jagmeet Singh: Yes, just to clarify it.

1410

Ms. Tamara Kuzyk: The text, the definition of "premises where a restricted access facility is located": The way it's defined in PC motion 5.5.1 "means, with respect to a particular restricted access facility, any real property relating to the restricted access facility that is under the direct control of its operator, including any buildings and structures on that property."

The Vice-Chair (Mr. Shafiq Qaadri): May we proceed, then, Mr. Singh, or do you have further questions?

Mr. Jagmeet Singh: My understanding is that the 5.5.1 that's passed now has a static, legislated definition of "premises," which would be in the legislation. If we pass 6.2.1, then the government wouldn't have the power through regulation to expand the definition of "premises," to go beyond what is already legislated here. If there was ever a change needed to "premises," it would have to be done through legislation. That would go through the regular channels of a legislated change, as opposed to a regulation change, which would be done by cabinet without the input of the rest of the House.

Ms. Tamara Kuzyk: I think that's a good overview of it, yes.

Mr. Jagmeet Singh: Okay. We should probably support it.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. If there's enough satisfaction, we'll move to the vote. Those in favour PC motion 6.2.1? Those opposed? The motion is carried.

Government motion 7.

Ms. Soo Wong: I move that clause 7(1)(f) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be struck out and the following substituted:

"(f) governing the exercise by persons appointed under section 2 of the powers of a peace officer;"

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. Comments before the vote? Mr. MacLaren and then Mr. Singh.

Mr. Jack MacLaren: Could you explain what that means?

Ms. Soo Wong: This is a technical amendment to subsection 7(1) of schedule 3 that governs the exercise of powers of persons appointed under section 2 and powers conferred by section 4, including imposing restrictions, limitations and conditions on the exercising of those powers to include peace officers, because we heard from deputations that they want the peace officer to be part of this piece. So that's why it's here.

Currently, clause 7(1)(f) authorizes the making of regulations with respect to two distinct matters: (1) exercise by a person appointed under section 2 of the powers of a peace officer, and (2) exercise by a person appointed under section 2 of powers conferred by section 4.

This motion and the subsequent motions would separate these two matters. So that's important.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. After Mr. MacLaren, Mr. Singh.

Mr. Jagmeet Singh: The way the act currently reads, it allows—I'm just trying to understand the difference. It's to strike out, in schedule 3, clause 7(1)(f). In 7(1)(f), it's "governing the exercise by persons appointed under section 2...."

This is a question, perhaps, to legislative counsel and perhaps to the government, which is bringing this. In clause (f), it allows the imposing of restrictions, limitations and conditions on the exercise of those powers. So it gives the ability to restrict the powers of those—

Ms. Soo Wong: Let me go back. This is a technical amendment to subsection 7(1) of schedule 3 that governs the exercise of power of persons appointed under section 2 and powers conferred by section 4, including imposing restrictions, limitations and conditions on the exercise of those powers to include a peace officer, because we heard a deputation that peace officers should be part of this.

The Vice-Chair (Mr. Shafiq Qaadri): Mr. Singh, are you pondering or may we proceed?

Mr. Jagmeet Singh: I'm just pondering for a moment.

Mr. Lorenzo Berardinetti: How long can you ponder for?

Mr. Jagmeet Singh: Yes. Is there a rule on how long you can ponder for?

Mr. John Yakabuski: We have an amendment, actually, dealing with that.

The Vice-Chair (Mr. Shafiq Qaadri): It seems to be a relatively rare occurrence, so I'll extend you the courtesy.

Mr. Jagmeet Singh: Thank you. Perhaps legislative counsel can explain.

Legislative counsel: In your opinion, what's significantly different between the way section 7(1), subsection (f) is currently, and then with it struck out in the new—because it's essentially being struck out and replaced by the following—

The Vice-Chair (Mr. Shafiq Qaadri): I'm sensing that legislative counsel would like to defer to—

Ms. Tamara Kuzyk: Yes, I think ministry counsel can speak to this very adequately.

The Vice-Chair (Mr. Shafiq Qaadri): I'm sure you know the drill and protocol. Please identify yourself and then address the question.

Mr. John Malichen-Snyder: John Malichen-Snyder, counsel with the ministry.

The way 7(1)(f) reads right now, the power to impose restrictions, limitations and conditions is only with respect to a person appointed under section 2. The proposal is to replace that with an ability—and (f) contains two parts: one is about appointing people, and the other is about imposing restrictions. The proposal is to separate that. So there will still be an ability to make regs governing the appointment. There will be a separate section governing the ability to make regs imposing restrictions, but the ability to impose restrictions won't be restricted to someone appointed under section 2; it would include any peace officer. So if there's a special constable who's providing services, the restrictions could apply to that special constable, for example. It's to broaden the ability to make regulations imposing restrictions.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. Are there any further questions?

Mr. Jagmeet Singh: Yes. I just don't see any language of imposing restrictions, though. I think that is a fair explanation, that it expands the definition to apply to everyone, including a peace officer. But it just governs the exercise. It doesn't include the language of imposing restrictions, limitations and conditions on the exercise of power.

Mr. John Malichen-Snyder: There are two related motions. The existing one subsection is being divided into two, so there would be a new (f), and then subsequently there would be a (j).

Mr. Jagmeet Singh: I see. That's the next page.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. I will now invite the vote on government motion 7. Those in favour? Those opposed? Government motion 7 carries.

Government motion 8.

Ms. Soo Wong: I move that subsection 7(1) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by adding the following clause:

"(j) governing the powers conferred by section 4, including imposing restrictions, limitations and conditions on the exercise of those powers."

The Vice-Chair (Mr. Shafiq Qaadri): Comments before the vote?

Mr. Jack MacLaren: It would seem that the previous motion and this one add up to what was (f). Is that not so?

Ms. Soo Wong: It's a new one. This is, again, a technical amendment, Mr. MacLaren. This is a new proposed clause, (j), that authorizes a regulation with respect to exercising powers conferred by section 4. So under the new clause (j), regulations can be made with respect to the exercise of powers conferred by section 4 by peace officers, not just a person appointed by section 2. I think the question Mr. Singh asked earlier is covered in this particular section.

The Vice-Chair (Mr. Shafiq Qaadri): We'll proceed to the vote?

Mr. Jack MacLaren: Yes.

The Vice-Chair (Mr. Shafiq Qaadri): Those in favour of government motion 8? Those opposed? Government motion 8 carries.

NDP motion 8.1.

Mr. Paul Miller: I move that subsection 7(1) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by adding the following clause:

"(j) governing the accommodation of religious beliefs and the needs of persons with a disability in relation to the exercise of the powers conferred under this act."

The Vice-Chair (Mr. Shafiq Qaadri): Any further comments?

Mr. Paul Miller: Recorded vote.

The Vice-Chair (Mr. Shafiq Qaadri): Recorded vote.

Ayes

MacLaren, Paul Miller, Singh.

Nays

Berardinetti, Jaczek, Milligan, Wong, Yakabuski.

The Vice-Chair (Mr. Shafiq Qaadri): NDP motion 8.1 is defeated.

Government motion 9.

Ms. Soo Wong: I move that subsection 7(2) of the Security for Electricity Generating Facilities and Nuclear Facilities Act, 2012, as set out in schedule 3 to the bill, be amended by striking out "clause 1(e) or (f)" and substituting "clause (1)(e), (f) or (j)".

The Vice-Chair (Mr. Shafiq Qaadri): Comments? We'll proceed to the vote, then. Those in favour of government motion 9? Those opposed? Government motion 9 carries.

Shall schedule 3, section 7, carry, as amended? Carried.

Schedule 3, section 8, carry? Carried.

Schedule 3, section 9, carry? Carried.

Schedule 3, as amended, carry? Carried.

Before we proceed to the final items, we need to return to sections 1, 2 and 3, which were deferred from earlier—stood down, as it were.

Shall sections 1, 2 and 3 carry? Carried.

Title carry? Carried.

Bill 34, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

I thank you for your endurance and co-operation. This committee is officially adjourned.

The committee adjourned at 1423.

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Also taking part / Autres participants et participantes
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Clerk / Greffier
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Staff / Personnel
Ms. Tamara Kuzyk, legislative counsel

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Thursday 7 June 2012

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Jeudi 7 juin 2012

Standing Committee on Justice Policy

Residential Tenancies Amendment Act (Rent Increase Guideline), 2012

Comité permanent de la justice

Loi de 2012 modifiant la Loi sur la location à usage d'habitation (taux légal d'augmentation des loyers)

Chair: Laura Albanese
Clerk: William Short

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Thursday 7 June 2012

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Jeudi 7 juin 2012

The committee met at 0902 in committee room 1.

SUBCOMMITTEE REPORT

The Vice-Chair (Mr. Shafiq Qaadri): Mesdames et messieurs, chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

Ladies and gentlemen and honourable colleagues, I call this meeting of the Standing Committee on Justice Policy to order. We have a number of presenters today, but before we do that, I will invite a member of the government, Mr. Colle, to please enter the subcommittee report.

Mr. Mike Colle: Bonjour. Merci, monsieur le Président. C'est le rapport du sous-comité du 4 juin 2012.

(1) That pursuant to the order of the House dated Thursday, May 31, 2012, the committee hold public hearings in Toronto on Thursday, June 7, 2012, during its regular meeting times.

(2) That the committee clerk, in consultation with the Chair, post information regarding public hearings on Canada NewsWire, the Ontario parliamentary channel and the committee's website.

(3) That the committee clerk schedule witnesses on a first-come, first-served basis.

(4) That witnesses be offered 10 minutes for their presentation and that witnesses be scheduled in 15-minute intervals to allow for questions from committee members.

(5) That the deadline for written submissions be 4 p.m. on Thursday, June 7, 2012.

(6) That, time permitting, the research officer provides a summary of the presentations on the morning of Friday, June 8, 2012.

(7) That, pursuant to the order of the House dated Thursday, May 31, 2012, amendments to the bill be filed with the clerk of the committee by 2 p.m. on Friday, June 8, 2012.

(8) That, pursuant to the order of the House dated Thursday, May 31, 2012, the committee meet on Monday, June 11, 2012, following routine proceedings for clause-by-clause consideration of the bill.

(9) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That's the subcommittee report, Mr. Chairman.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Colle. Before we proceed to the vote for the adoption of the report, are there any comments, queries, difficulties, challenges? All right, seeing none, may I have the vote for the subcommittee report to be adopted as read? All in favour? All opposed? Carried. That's great. Thank you.

RESIDENTIAL TENANCIES AMENDMENT ACT (RENT INCREASE GUIDELINE), 2012

LOI DE 2012 MODIFIANT LA LOI SUR LA LOCATION À USAGE D'HABITATION (TAUX LÉGAL D'AUGMENTATION DES LOYERS)

Consideration of the following bill:

Bill 19, An Act to amend the Residential Tenancies Act, 2006 in respect of the rent increase guideline / Projet de loi 19, Loi modifiant la Loi de 2006 sur la location à usage d'habitation en ce qui concerne le taux légal d'augmentation des loyers.

The Vice-Chair (Mr. Shafiq Qaadri): We'll now proceed to our deputations. Once again, just to remind all of those assembled, we'll invite presenters. I'll ask you to please identify yourselves, particularly before you speak, for the purposes of Hansard recording, as it does become part of the public record. You'll have 15 minutes in which to make your deputation. If, for example, you spend 10 minutes reading from a prepared report, the time remaining beyond that will be divided equally amongst the parties for questions and comments. That rule, in terms of time, will be enforced with military precision.

ACORN CANADA

The Vice-Chair (Mr. Shafiq Qaadri): I will now invite representatives of Acorn Canada—president Bisnath, chair Lantz and member Jagroo—to please come forward. Welcome. I'd invite you to please begin. Your time officially begins now.

Ms. Kay Bisnath: Good morning. Mr. Speaker, ministers, my name is Kay Bisnath and I'm the president of Acorn Canada and a member of Toronto Acorn's Gordonridge chapter in Scarborough.

In Ontario, Acorn has chapters in three cities: Toronto, Ottawa and Hamilton. The vast majority of our 30,000-person membership lives in high-rise rental apartment buildings. We knock on thousands of doors a year, talking to tenants about issues and concerns that affect them most. My reason for being here today is to speak to you regarding Bill 19 and how it addresses the needs of low- and moderate-income people in Toronto.

While we believe that limits on the yearly increase of rent are indeed important, we are much more concerned with the rent inflation that we see across the city and in Ontario. It is so hard for low-income people to get by in Ontario. People are living hand to mouth, often choosing between paying their rent and buying groceries to feed their family.

The increasing unaffordability of rental housing in Ontario is largely due to the fact that there is no rent control in place to protect tenants from extreme rent increases once units become vacant. This must be limited. We need the province to bring back real rent control.

As I mentioned before, Acorn Ontario has spoken to thousands of tenants over the course of eight years in Canada. We can say with confidence that the single most dire concern for low-income tenants in rental housing is substandard conditions. We need the province to do something that enforces standards on bad landlords. If there are not serious financial deterrents to neglecting repairs, many tenants in Ontario will continue to live in unhealthy and inhumane conditions while landlords continue to increase rents and line their pockets.

Acorn supports any movement to withhold rent increases if work orders are outstanding. We ought to encourage the province to examine its Residential Tenancies Act and make other amendments that include financial deterrents for neglecting necessary repairs. Thank you.

The Vice-Chair (Mr. Shafiq Qaadri): The time is yours.

Mr. Edward Lantz: Good morning, ladies and gentlemen. My name is Edward Lantz and I sit on the board of directors of Toronto Acorn as chair of the St. James Town chapter, representing approximately 20,000 members across this city. I also live in a high-rise private rental apartment building.

St. James Town has the densest population of low-income housing units in Canada, and those of us who live there are no strangers to the wide range of issues that impact tenants in Ontario, including deplorable housing conditions, economic and social issues associated with densely populated areas and, of course, the increased cost of living.

Bill 19 addresses an important issue. It is certainly true that limits need to be set on the annual increase in rent in apartment buildings, so we're happy to see that this concern is being examined. However, the bill, as it stands right now, does not address the need for real rent control in Ontario.

In places like St. James Town, the turnover rate for tenants is extremely high. Low-income tenants move in and out of the apartment buildings for a wide variety of reasons and circumstances. What this means is that the vacancy rate in high-density areas like St. James Town is extremely high. Bill 19 does not protect tenants against landlords raising rents to whatever amount they want once a unit becomes vacant.

0910

Without rent control, it is becoming so expensive so quickly to live in this city that the situation for low-income renters is dire. It is possible that a neighbourhood like St. James Town will eventually become unaffordable, pushing low-income renters further and further outside the city, away from jobs and necessities.

We need the province to reintroduce real rent control which will limit the amount of money a landlord can charge for a vacant unit and we need this to happen now. If the Residential Tenancies Act is being re-examined with regard to the guideline, it must also be re-examined in regards to rent control.

Thank you.

Mr. Rohan Jagroo: Hello. Good morning. My name is Rohan Jagroo. I am also a member of Acorn and I live in the Weston-Lawrence neighbourhood. I'm here to discuss the same issues as what my colleagues have been discussing with you all and it's based on the same thing: the rent issues and rent control in Ontario.

I think a lot has been said on that behalf already. What I would like to mention is that people are having a lot of problems with the issue of rent control, how it is controlled and how the landlords are being able to get around it and to raise their rent whenever they want and to whatever height they want to raise it without the government being able to have some kind of a mechanism in place that would prevent them from doing so.

Actually, I have this note I was going to read from but I would prefer to just speak to you openly.

I, myself, have been looking at apartment buildings because I've been trying to move from where I live presently, trying to get another place that's less noisy and all that. So I've been looking around at buildings and the conditions that I saw these buildings in where I go to look at these places—they're small, the kitchen cupboards are breaking down, the walls are really dirty. It's a mess, it's a dirty mess. I think there should be some kind of inspection done to these places that would give the landlord something to do when people are trying to get a decent home to live in instead of having these deteriorated apartments.

Now that they're charging you such a—the rent has skyrocketed from $760 to $925 in just about two years. Somebody needs to have an eye out on these landlords and what they are doing out there to these tenants because people are really having a terrible time trying to survive in this country. Some of them have to jostle between two jobs to make up the rent, some of them hardly have a good, proper meal when the day comes—and this is a fact—just to make sure they get the rent for the landlord, which is whatever he asks for.

I think Bill 19 does address some of the issues, but the issue of the landlord getting around that bill, it doesn't

address that. I'd appreciate if you guys would just take a closer look at what's really happening in this province and try to work with these tenants and the landlords to have something resolved about it.

Thank you very much.

The Vice-Chair (Mr. Shafiq Qaadri): Have you finished your testimony?

Mr. Rohan Jagroo: Yes, I have.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. We'll offer it to the PC Party, Mr. Clark, to begin with. You have about a minute and a half or so per side. Please go ahead.

Mr. Steve Clark: First of all, thank you very much for your presentation. I appreciate the advocacy that you provide for your members. There's no question that I've heard from a number of groups about some of the deficiencies in government policy when it comes to housing.

I appreciate your position regarding rent control; however, I'd be interested to hear what you feel the government should be pursuing in terms of providing more spaces, more affordable housing units in the province. I'd also be interested to know whether your group has any issues with the waiting lists that people have for trying to access affordable housing units in your city.

Ms. Tatiana Jaunzems: Hi. My name is Tatiana Jaunzems. I'm the director of Toronto Acorn. Our organization has focused primarily on private rental housing and issues around landlord licensing and rent control in Ontario. We do have a large portion of our membership who live in social housing and we've always stood behind groups that work and advocate for shorter waiting lists, but our primary focus has been on the issue of affordable and livable housing in private rental stock. That's why this bill is of particular interest to us.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Clark. To the NDP, Mr. Miller.

Mr. Paul Miller: Thanks for coming today. Certainly our party is not happy with Bill 19. It doesn't go far enough. It's very simple—a few lines on one page. We certainly understand your situation.

Would you also say that the inspections of these buildings is poor, that they don't follow up and that they don't fine the owners for not fixing up things? Would that be a fair statement?

Mr. Edward Lantz: I would definitely agree with that. We've been involved with the city of Toronto with the municipal licensing standards. We were involved with an audit program that they were conducting for the last—I'd say we're going on four or five years now; it's been a while. Primarily what had happened is that we were trying to introduce landlord licensing, and they kind of did an about-face on that whole program and introduced an audit program, and we worked hand in hand with MLS.

You're absolutely right: The penalties are not stiff enough. Landlords are not abiding by the work orders. They're being left unattended. In the meantime, tenants are required to pay their rent on time, in a timely fashion, and the landlords are relatively getting away with not pursuing the repairs or doing what they should be doing as landlords. In any tenancy agreement, it is the responsibility of the tenant to keep the apartment in good repair and also the responsibility of the landlord to do the same. So we see a lot of buildings in Toronto, roughly 6,000 high-rises, 80% are in disrepair, and the audit program hasn't worked, so we'd like to pursue a landlord licensing option in that regard.

Mr. Paul Miller: I'm from Hamilton. I have a very tough area too. I'm well aware of the ongoing problems that people on a low income face. It's absolutely disgusting.

Mr. Edward Lantz: I agree.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. To the government side, Mr. Colle.

Mr. Mike Colle: Thank you for the very clear and thought-out presentation—really, to the three presenters, you did a very good job. It's really appreciated, your preparation and your time to come here.

In terms of Acorn's position, I'm not sure if I'm clear. You're not in support of this cap that's being proposed here?

Mr. Edward Lantz: I would say that we are in support of the cap. Primarily the other side of that coin is when an apartment becomes vacant. I'll give you an example. I live in a high-rise private building, and my rent is just under the $900 range. The apartment at the end of the hall become vacant last month. The rent was exactly the same. The landlord jacked the rent up an additional $60, and then that 1% to 2% cap is going to be added on top of that. Our main contention is the fact that the area of the vacancy, when it does become—

Mr. Mike Colle: Vacancy decontrol, basically, yes.

Mr. Edward Lantz: We need control in that area.

Mr. Mike Colle: Yes, I think you made that clear. Thank you.

I guess another favourite topic of mine is, and you don't have to give me your personal stories, what about the instances of bedbug contamination? Has Acorn been involved in that battle and worked with the city and the province on that at all?

Mr. Edward Lantz: Yes, we have. As a matter of fact, we've been fully engaged with that. Primarily we're very disheartened to find out that the funding was stopped in regard to the bedbug campaign. That kind of left us a little disheartened. That's part and parcel of the landlord's obligations to maintain those units in good repair. Given that, when the work orders go in for—

The Vice-Chair (Mr. Shafiq Qaadri): I'll need to intervene there. Thank you, Mr. Colle, and thanks to the members of Acorn for your presence and your deputation.

FEDERATION OF RENTAL-HOUSING PROVIDERS OF ONTARIO

The Vice-Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: the

Federation of Rental-housing Providers of Ontario, Mr. Brescia and manager Chopowick. Welcome, gentlemen. I know you know the protocol very well. I invite you to please begin now.

0920

Mr. Vince Brescia: Good morning, Mr. Chair, and thank you for allowing us to speak to the committee. Good morning, committee members. My name is Vince Brescia; I'm the president and CEO of FRPO. With me today is Mike Chopowick, the manager of policy for FRPO.

FRPO stands for the Federation of Rental-housing Providers of Ontario, and we represent over 2,300 residential landlords and property management companies across the province of Ontario. Together, our members represent over 350,000 rental homes in the province.

On behalf of all rental housing providers in Ontario, we want to express our disappointment in this amendment. Capping rent increases at a rate below inflation, which is what this bill will ultimately do, will prevent owners from fully recovering the costs necessary to provide and maintain quality housing. We constantly hear from tenants and political leaders that they want to see rental housing properly maintained; we just heard it from the last presenters. This bill runs counter to those wishes. Setting an arbitrary price ceiling fails to recognize that housing industry costs, like repairs and maintenance, are not subject to any price caps.

There is a reason that nine Nobel laureates are against rent control caps. It is universally accepted amongst all credible public policy specialists that rent controls are bad public policy.

Our position is that this new rent cap is unnecessary for the following reasons. Rents in Ontario are very reasonable. Rent increases have been very modest under the recent guideline formula. Renting is becoming increasingly affordable compared to home ownership. There is no good public policy rationale for preventing owners from being able to recover costs through an inflationary increase. This policy will ultimately impact jobs and the economic benefits that go with expenditures on repairs and maintenance.

After considering these facts, I think you're going to find that there is no need to ensure the passage of Bill 19. It is an unnecessary measure that will ultimately harm the supply and quality of rental housing in the long term.

Looking at the recent guideline in a historical perspective shows that additional legislative reforms really aren't necessary. There's a chart included in your package which will show the list of annual rent increases over the past couple of decades.

In 2011, the industry experienced the lowest rent control cap in Ontario's history, at 0.7%. This limit was very extreme compared to the cost increases of 6% or 7% being experienced by the industry in that year. This year's guideline has come nowhere near to allowing the industry to recover the cost it has experienced over the past two years.

Rents are also falling compared to inflation. Over the past decades, rents have fallen in real terms when they are adjusted for inflation. As shown in the chart included in your presentation, using 2002 constant dollars, average two-bedroom rents in Ontario have fallen from $883 in 2002 to $840 in 2011. Compared to the prices of other goods and services, rents are not increasing; they are falling. Meanwhile, the costs landlords must pay to manage and maintain rental housing continue to escalate.

Tenants are also seeing the lowest rates of rent increase we've seen in a generation. The current rent control policy already caps rent increases at a very low level; for example, the record low 0.7% guideline I mentioned for 2011. According to the Ministry of Municipal Affairs and Housing, the average annual increase from 2004 to 2011 was only 1.89%. Clearly, Ontario tenants have not experienced unreasonable rent increases. There's no evidence from the recent history of rent increases that an arbitrary cap of 2.5% is necessary.

Ontario rent increases have also fallen short of the Canadian average. According to CMHC, average two-bedroom rents in Ontario increased only 1.8% in 2011, less than in many other provinces and less than the national average of 2.2%. Despite higher rent increases across Canada, no other province is moving to more tightly regulate rent controls at this time.

Another thing you should consider is that incomes have been increasing faster than rents. As noted in the government's 2012 Ontario budget, real personal disposable income in Ontario has increased a cumulative 23.6% from 2003 to 2011. In contrast, the average two-bedroom rent in Ontario grew by only 13% over the same time period. This information is included also in a chart in your presentation, so you can peruse it at your leisure. We think that, given this, there really is no reason to put an artificial cap that prevents us from properly maintaining Ontario's aging rental stock.

Another thing you should consider is that rents have remained very affordable compared to home ownership. For some time now, rents have remained very stable while other real estate costs have escalated significantly. The rental housing sector has continued to provide stable, low-cost housing options for Ontario citizens even as home ownership and other real estate costs have grown significantly.

The next chart that's included in your documents demonstrates how rents in Ontario have remained relatively stable in the GTA market since the 1970s, while home ownership costs have risen dramatically. Once again, we don't see evidence, if we're looking at what's happening in the rental market, of the need for an arbitrary price cap.

The same holds true for ownership prices across Ontario for the past three years compared to rental price increases, so we put an Ontario-perspective chart in there as well. It applies right across the province, what we're talking about. We've been a bulwark of stability, actually, in affordability for tenants across the province.

The other thing you need to consider is that Ontario's rental stock is aging. The typical rental building in Ontario is now 50 years old. If you know anything about

50-year-old rental buildings, you know that these buildings require more and more maintenance and repairs, not less. If you do not let us invest in these aging buildings through cost recovery, Ontario will begin to lose them.

In terms of housing affordability, which we heard from the previous group, there are better solutions. Applying an arbitrary rent control cap to all occupied units does little to assist the lowest-income households who have insufficient incomes to afford almost any type of housing without additional financial assistance. As noted by CMHC in 2010, it is households in the lowest-income quintile that account for 81% of all households in core housing need. As shown in the chart included in your presentation, there were no middle-, upper- or higher-income households in core housing need in 2007.

It is for this reason that FRPO and other housing and poverty stakeholders have advocated for a monthly housing benefit to help low-income renters with high shelter-to-income burdens in communities across Ontario, particularly in the Ottawa and greater Toronto areas where rents are higher than average. Not only is this a superior way to improve housing affordability for those who need it, but it will also help lower-income households better afford other necessities such as food and transportation.

In summary, based on all the evidence available, there is no problem in Ontario currently that requires the unfortunate Bill 19. Rent increases are less than inflation and are actually falling in real terms. Incomes, home prices and many other prices are increasing faster than rents. Rent increases in Ontario are modest compared to other provinces, none of whom are contemplating the rent increase cap that is being proposed in Bill 19. Our aging rental stock will require inflationary increases in order to keep it in a good state of repair. Finally, our collective goal should be to assist the lowest-income renters with their housing affordability problems with actual financial assistance, not a rent control cap that hurts the rental stock and provides no real benefit to those with insufficient incomes.

Thank you very much for your attention to our presentation this morning.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. We'll begin with the NDP. Mr. Miller.

Mr. Paul Miller: Thanks, gentlemen, for your submission. I've got a couple of questions. In rent situations in Ontario, obviously it's not up to the owner of the building to be concerned about affordable housing or unemployment or that wages are down and social benefits are down and that the people don't have the resources to pay their rent.

In your submission here, I don't see anything about profits over the years that the owners of the buildings or the companies have. I don't see anything in here about—and if things are so bad for the owners of the buildings, why aren't they selling them and getting out of the rental business? I have real concerns about that.

The quality of the buildings is atrocious. The owners of buildings constantly complain that they can't repair their buildings, then they use that as an excuse to raise the rent. Would that be a fair assessment?

Mr. Vince Brescia: Which is a fair assessment?

Mr. Paul Miller: Well, all of them.

Mr. Vince Brescia: You threw a lot of things in there.

Mr. Paul Miller: I certainly did.

Mr. Vince Brescia: So where do you want me to—

Mr. Paul Miller: In my experience, all I can say is—where I'm from—that I've gone on tours of some of these communities and the buildings are atrocious. They're in terrible shape. The owners neglect them, and then they raise the rents. If the cost of preparing a building and getting it ready for livable conditions is so horrendous—and I never see any owners tell us what they make on the money.

Mr. Vince Brescia: Are you against there being profits in the industry?

Mr. Paul Miller: I didn't say that. I said I didn't see anything in your report telling me about what kind of money—

Mr. Vince Brescia: What would you reasonably have us say about profits in this report?

Mr. Paul Miller: I'd like to know, as opposed to how much they have to pay out for costs for repairs, as opposed to what they pay for taxes on their residences, what's the profit? Are they making 30%, 40%, 50% on a unit?

Mr. Vince Brescia: Are you assuming we would have this information on every single member, that they all have—

Mr. Paul Miller: Well, it would be nice if you had it as a general consensus.

Mr. Vince Brescia: Do you want this for every business in the province?

Mr. Paul Miller: Okay, obviously you're not going to answer me. Thank you very much.

Mr. Vince Brescia: I think your question is very unreasonable.

Mr. Paul Miller: Sure. Of course you do. Thank you.

0930

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. For the government side, Mr. Colle.

Mr. Mike Colle: Thank you for the presentation. I guess the one thing I want to say is, thank God there is rental housing in Toronto, because if there wasn't rental housing, I don't know where people of modest means would live in Toronto. They certainly can't afford condos. We need good rental housing stock in Toronto and that's something I would certainly say on the record here.

Certainly in my community, where half of my residents are tenants, the general housing stock has improved. There are always the chronic bad actors, which we deal with with property standards and so on and so forth. But again, especially in Toronto, we need rental housing. We don't need more condos, that's for darn sure.

That's the question I was going to ask you: Is there any more rental housing stock being built, or has this

explosion of condo mania which is going on basically driven the rental housing industry to a standstill?

Mr. Vince Brescia: Thanks for your question, Mr. Colle. It's a very good question, actually, and I appreciate your balanced approach to your question. There is rental housing being built. There are a number of buildings going up in the city at the moment. There are companies that are interested in investing. It's difficult to make the numbers work. As you know, rents are very low in the province of Ontario, so it's hard to make new rental building feasible.

The other issue is, there's an abundance of rental supply from condominiums, and most people know this and CMHC now tracks this in all of their reports. Up to 75% of the units in some of these condos are investor rentals, so it is a huge source of rental supply. Ontario is actually quite blessed with an abundance of new rental supply, but a lot of people don't recognize it as new rental supply.

There are people who would like to invest more, but when changes like this happen on the legislative front, it definitely puts a damper on the investors' perspective about investing in the province.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Colle. To the PC side, and Mr. Clark.

Mr. Steve Clark: Thank you, gentlemen, for attending today and making your presentation. I'm very interested in the paragraph on page 8 regarding your work with housing and poverty stakeholders on the issue of a housing benefit. I would think that, as legislators, we'd be far more useful in discussing a topic like that than tinkering around the edges in terms of a Bill 19. I'd love to hear some of the work that you've done on the housing benefit side.

Mr. Vince Brescia: Thank you for your question, Mr. Clark. We're very proud to be part of a coalition that is supporting a housing benefit that includes a broad array of stakeholders and poverty activists.

It is well recognized that there are a lot of people who have housing affordability problems. While rents are relatively low in the province, we have many people who can't afford even the low rents for the units that they occupy. They're paying anywhere from 50% to 75% of their income out in rent, and that doesn't allow them to put food on the table.

We're with the Daily Bread Food Bank and a variety of other poverty coalitions and the Ontario Non-Profit Housing Association. It's really a broad coalition that supports this and we'd love to see all-party support for a move in this direction. I know the province has financially challenged times, but if we could repurpose other funds that are available in other programs, we think this would be a great social policy reform for the province. We'd love to see you contemplating going forward, so thank you for asking about it.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Clark, and thank you, gentlemen, for your deputation and presence on behalf of the Federation of Rental-housing Providers of Ontario.

TORONTO ATMOSPHERIC FUND

The Vice-Chair (Mr. Shafiq Qaadri): I now invite our next presenter, Mr. Purcell of the Toronto Atmospheric Fund. Your written materials have already been distributed and I would welcome you and invite you to please begin now.

Mr. Bryan Purcell: Thank you, Mr. Chair, and thank you to the committee members for the opportunity to speak with you today.

My name is Bryan Purcell and I'm with the Toronto Atmospheric Fund. The Toronto Atmospheric Fund was established 20 years ago by the city of Toronto and the province of Ontario as an arm's-length agency of the city of Toronto to create and promote local greenhouse gas reduction opportunities and energy efficiency opportunities. We've been operating for 20 years off of an endowment provided by the city at that time, at no cost to the taxpayer.

Based on careful study of Toronto's and the province's emissions profile, we've identified for many years the rental housing sector as a key area where we should be looking for improvements in energy efficiency, and we've been working with property owners in that area for the past five years through our TowerWise program, helping to create those substantial emissions reductions.

I'm here today because there are a number of unintentional barriers to energy conservation in the Residential Tenancies Act. These barriers are slowing investments in the rental housing sector, especially on the energy efficiency front, and are therefore impeding affordability in the rental housing sector in the long term. So I'm going to recommend that the committee consider slightly expanding the scope of Bill 19 to address and remove some of these unintended barriers.

Just to start off, as background, there's enormous potential to improve energy efficiency in the rental housing stock. Numerous studies, including some undertaken by ourselves and others by the federal government, the provincial government and academics have identified opportunities to reduce energy consumption in typical buildings by 25% to 50% using energy efficiency investments that will pay for themselves multiple times during their useful life.

Realizing this potential creates significant economic and environmental benefits for landlords, tenants, the general public and the planet. It starts with major capital investments by landlords in energy-efficient equipment and materials, and those investments are recoverable through energy cost savings. We make two minor but powerful recommendations for amending the act that could be integrated into Bill 19, which would facilitate investment in conservation by landlords.

Specifically, we're focused on a couple of subsections of the act that have the unintended effect of discouraging conservation action. It's a classic case of well-intended legislation which creates completely unforeseen barriers and problems, and we think this would be a good time to clear those up. We believe that these barriers can be resolved while respecting the intent of the original

legislation and creating a win-win scenario for landlords, tenants and the general public.

On the barriers to conservation that we see in the act, there are really two specific ones. One is subsection 126(1), which allows landlords to apply to the landlord-tenant board for above-guideline increases in rent based on extraordinary increases in total utility costs for the building. An extraordinary increase, under the act, is anything greater than the guideline, plus 50%. It's actually quite common that energy costs could increase year over year by that amount.

The ability to pass on to tenants all of the costs associated with these extraordinary increases in utility costs undermines the incentive to invest in energy efficiency to control rising energy costs. Moreover, in some cases—not all cases—the increase in total cost is largely or partly due to insufficient maintenance and poor operation of the building's major mechanical systems, which are what are determining the energy performance, meaning that they could have been avoided with appropriate maintenance and operating practices.

On the other hand, section 128(3) specifies that once a landlord has received an above-guideline increase based on utility costs, if at any point in the future their total utility costs come down, they must pass those savings on to any tenants who were there when they got that above-guideline increase. This obligation never expires. The intent of that provision, I believe, was to ensure that if landlords received an above-guideline increase based on a spike in utility cost prices, and prices came back down in the following year or in a future year, they should have to reverse that rent increase.

However, the legislation as is doesn't distinguish between reductions in utility costs that are due to prices changing and a major capital investment from the landlord. As a result, once a landlord has received an above-guideline increase for utility costs, if at any point in the future they get religion on energy efficiency and decide to make those investments in their building to bring it to a better state of repair, they're obligated to pass those savings on to the tenants, which significantly reduces or even eliminates the return on investment for the landlord. As a result, the landlord typically will simply not make those investments under that scenario.

Taken together, the potential effect of increases in utility costs, whether they're from prices or the operation of the building, is that the costs are passed on to tenants while landlords are strongly discouraged from investing in energy efficiency in their buildings, because they must pass on a big part of that return on investment to their tenants. This outcome is clearly contrary to the interests of tenants, landlords, the general public and the planet.

On to our recommendations: We've got two simple but, we think, impactful recommendations. Both of the subsections I have mentioned exist for a good reason. Landlords require some mechanism to pass on extraordinary increases in utility costs to tenants, especially if it's due to major price increases and especially if it's a building where they're operating it efficiently. On the other hand, fairness requires that, should prices come back down, then that rent increase should be reversed. The problem arises because landlords are able to pass on these increases in energy costs regardless of whether they're operating an efficient building or making an effort to improve the efficiency in that building. On the other hand, they're required to pass on energy savings from future investments and efficiency to tenants, even if those reductions in costs are due to their own capital investment.

0940

These two problems we feel can be resolved through simple amendments without undermining the intent of the legislation. Specifically, we're recommending that section 126 of the act be amended to create an exception so that extraordinary increases in utility costs are not eligible cost increases for the purpose of that section, unless the building is reasonably energy-efficient or the landlord can provide evidence that they have made efforts to improve the efficiency of the building.

Relatedly, that would require some regulatory definition about what is an energy-efficient building and reasonable efforts to improve efficiency. We've put in some recommendations in that regard. I'm not going to get into that in detail today, but it can be managed.

That would really protect tenants by putting the onus on landlords to demonstrate that they're operating the building efficiently, or that it is an efficient building, as a pre-condition to receiving those above-guideline increases.

Our second recommendation is that section 128 of the act be amended to add an exception so that reductions in total utility costs for a building don't trigger a rent reduction if those decreases in total utility costs are the direct result of an investment by the landlord in energy efficiency. The idea there is to ensure that if it's the landlord making an investment in efficiency, they should be able to get the benefit of that investment in the form of reduced energy costs, in order to allow them to make that investment. It ensures that all landlords, even those who have gotten an above-guideline increase in the past, retain a strong incentive to invest in energy efficiency, based on the ability to reduce their costs. However, it still preserves the original intent of the legislation by ensuring that if they got the increase due to price increases, and utility prices come back down, then they still must pass those savings on to tenants.

Absent this amendment, there's a serious risk—and we see it very often—of buildings falling into a cycle of decline characterized by increasing utility costs, followed by above-guideline increases in rent, followed by further cost increases as the building ages etc. In order to break that cycle, it's fundamental that landlords have an opportunity to realize a return on investment from investing in energy efficiency in their buildings. If they cannot realize that return on investment, they simply won't make those investments.

Ultimately, energy efficiency in the rental housing sector is in the best interests of landlords and tenants, as

well as the general public. We believe these recommendations would benefit both landlords and tenants, and would generate a number of benefits that would help the province meets some of its priorities, including increased investment in energy efficiency and renewal of the rental housing stock, which we've heard is aging rapidly, job creation associated with the energy efficiency improvements in buildings, enhanced affordability in the long term for the rental housing sector, increased profitability for rental housing operators, and reduced air pollution and greenhouse gas emissions.

That's really the substance of our recommendations. Thanks again for the opportunity to present them today. I'm happy to take any questions you may have.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. We'll start with the government side. Mr. Sergio.

Mr. Mario Sergio: Thank you, Mr. Purcell, for coming down and making a presentation to our committee here. All three of your recommendations seem fairly appropriate. We hope that the bill, when it's finally presented to the House, may incorporate some of the things to make the bill even better. We have heard already some suggestions from some deputants.

With respect to your participation presentation, we have existing buildings—and there are problems with existing buildings—and new ones. What have you been able to do within the city of Toronto, with your ideas and your involvement, with respect to new buildings? Inserting some of the recommendations that you have been proposing—energy efficiency, conservation and all of that—what have you done, or what has the city of Toronto done, with new buildings?

Mr. Bryan Purcell: Thank you. That's a great question. In the area of new buildings, we've been active for a number of years. We created a lending program for new construction in the condominium sector, which was what was being built at the time, called the green condo loan, which solved the split incentive between developers and the later people who will occupy the units by creating a financial structure to create those energy efficiency improvements when the building is built. That was very successful and helped influence the city. We worked with the city to create the Toronto green standard, which raised the bar for all new construction in the city of Toronto. The province has recently put in similar requirements in the new version of the Ontario building code—

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Sergio. To Mr. Clark.

Mr. Steve Clark: Thanks for your presentation. Have you got some case studies of some of the city's housing stock that have used this philosophy and shown the savings? Are there some examples that you can provide us with?

Mr. Bryan Purcell: Yes, we've done a series of case studies with partners in the rental housing sector and the condo sector of buildings that have reduced their energy costs by 20% or more. I actually brought a summary here today which I can distribute, which has a summary of each of those case studies. They're available in depth on our website. We're creating new ones all the time and working with buildings; we often see reductions of 15% to 25% quite commonly in total energy use in these buildings.

Mr. Steve Clark: So you have case studies for both city buildings and private sector buildings?

Mr. Bryan Purcell: That's correct.

Mr. Steve Clark: What's the range of age of those buildings?

Mr. Bryan Purcell: We've profiled buildings from—10 years old would be the youngest, to over 50 years old.

Mr. Steve Clark: Are the savings consistent between them?

Mr. Bryan Purcell: Yes. Typically in the very old buildings built before 1970, we see a higher potential for savings, but even in buildings built very recently—one of these case studies is a 10-year-old condo that reduced its energy use by 20%.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Clark. Ms. Forster.

Ms. Cindy Forster: Thanks for your presentation. I've been involved in the affordable housing sector in my previous life, certainly, where we made energy-efficient improvements to buildings and realized some savings. But my concern about your presentation is the fact that you want landlords to get all of the benefit of the energy-efficient investments. Do landlords not get to write off improvements to their actual buildings? Many of the buildings we're talking about here are somewhere between 20 and 50 years old. These buildings have been paid for over and over and over again. My understanding is that landlords actually get to write off a fair bit of the improvements to their buildings, so why shouldn't tenants realize some rent reductions when landlords are already getting to write this off and getting a reduction through the income tax system?

Mr. Bryan Purcell: That's a great question. There is some tax writeoff ability for major capital improvements. Typically, with most major building equipment, it's over 25 years that it can be written down. So the benefit in any given year is very low.

Further to your question, we just simply believe that the person who's making the investment in the energy efficiency needs to be the one who's realizing the savings because, without that, these investments just don't happen. That said, I believe that improving efficiency in these buildings will help to preserve affordability in the rental housing sector over time because rents are determined both by market conditions and by the operating cost of the building.

Mr. Paul Miller: One quick question: Do you really sincerely believe that the owners of the buildings will pass on savings?

The Vice-Chair (Mr. Shafiq Qaadri): I need to intervene there, Mr. Miller. Thank you, Ms. Forster; thank you, Mr. Miller; and thanks to you, Mr. Purcell, for your deputation on behalf of the Toronto Atmospheric Fund.

PARKDALE COMMUNITY LEGAL SERVICES

The Vice-Chair (Mr. Shafiq Qaadri): Now I invite our next presenters to please come forward, representing Parkdale Community Legal Services. Mr. Poesiat, welcome. I invite you to please begin now.

Mr. Bart Poesiat: My name is Bart Poesiat. I am a community legal worker with Parkdale Community Legal Services. I also want to introduce you to a few of our law students, because we're a teaching clinic in association with Osgoode Hall. The reason is that these students have produced part of the submission that I'm going to read to you. I'm looking for my list here, with their names: Monica Cop, Krishana Persaud and Wendy Sun.

One other thing, the Parkdale Tenants' Association, which has some notoriety with the Golden Cockroach campaign and the Lord of the Slums campaign—it's an association dear to my heart that I work with—says hello to you and wants to leave you a little souvenir.

Rents go up—I only have two exhibits. Rents go up and incomes go down. Why? I'll leave that with you. I'm not sure I have the answer in my submission, but the answer is out there somewhere.

0950

Thank you for allowing Parkdale Community Legal Services to address your committee on this issue. We support Bill 19 because it will limit the annual rent increase guideline. Ontario tenants would at least have some protection from excessive rent increases in an era of high unemployment and stagnating and declining wages. So that's good.

However, Bill 19 doesn't nearly go far enough. Bill 19 is only a very small step in addressing the inequities of the Residential Tenancies Act and the rent review system. If amended, as we will suggest, it could be an opportunity to make badly needed reforms to the rent review system.

Some of the problems are that Bill 19 still allows guideline rents to increase at an exponential rate while wages have been declining, at least for tenants.

Secondly, Bill 19 does not extend rent control to rental housing built after 1991. This provision was intended to provide financial incentive to build rental apartments. However, this incentive failed and a building boom never materialized. Some buildings were built, but not too many. The tenants of these buildings are at risk of economic eviction because there's no rent control there at all.

In the third place, Bill 19—and this is a real biggie you've heard about before—does not extend rent control to vacant units. That's a loophole big enough to drive a truck through. When a tenant leaves an apartment, the landlord is free to increase the rent to whatever level the market will bear. Rents could double or triple if the vacancy rate is low enough. Also, vacancy decontrol can provide an incentive for landlords to bully their tenants to move out of their units, and a disincentive for some landlords to regularly repair units that have long-term tenants. We know of cases like that. Not every one does that, but there are some bad examples.

Rents go up and incomes go down. Rents have become a leading economic issue for tenants in Ontario and especially in Toronto, where the vacancy rate is low. By 2010, the median incomes for tenants had decreased by 11.7% over 15 years, while rents had more than doubled. In 2009 alone, average rents across Ontario increased at triple the rate of inflation. The 2006 census indicates that 20% of tenants in Ontario pay at least half of their income on housing. In low-income communities such as Parkdale, such percentages are even higher. For many tenants across Ontario, rent has gone up while incomes have gone down, a point I've already belaboured. Tenants in Ontario need their government to stand up and address their real needs. Tenants are citizens too.

The food banks subsidize landlords. This is a problem that comes up again and again. Whenever there's a conference on hunger, it turns out that a lot of tenants, especially those on low wages and social assistance, spend a lot of their money on rent and then there's not enough left to buy food, so they come to the food bank. Food bank use has gone up more and more, and we now get a weird situation where food banks, which rely on donations, are actually subsidizing landlords.

In light of all this, we propose amendments to this bill which would make—this is a little bill; it could make it a big bill and it could make it a very progressive bill. First, remove the guaranteed minimum 1% increase. There's no reason for landlords to be automatically entitled to a possible rent increase without cause.

Secondly, remove the rent regulation exemptions from all privately owned rental housing built after 1991. This is ridiculous. Tenants living in newer buildings, 20 years or less, have no protection from rent control at all. So tenants in post-1991 buildings are subject to unlimited rent increases.

Third, eliminate vacancy decontrol and bring back real rent control. With vacancy decontrol, you don't have real rent control. The rents keep on going up and up.

In this way the rental housing amendment act will have a far-reaching impact on the present problems and inequities of the Residential Tenancies Act and the rent review system. Thank you.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. We'll begin with the PC side. Mr. Clark, about two minutes.

Mr. Steve Clark: Thank you very much, Bart, for your presentation. I appreciate hearing from you on this matter. One of the previous deputants talked about the issue of a housing benefit. I'd be interested to hear whether you have any opinions or discussion on that type of assistance.

Mr. Bart Poesiat: Well, a housing benefit would certainly be useful. However, the need for that kind of benefit is so overwhelming and the lack of supply of non-profit housing—as you know, the waiting list is immense and growing. What we have, for instance, in Toronto, TCHC—Toronto Community Housing Corp.—has been

so neglected that that alone is not going to take care of the affordability problem, although we would hope that eventually something is going to happen that alleviates the affordability problem for tenants.

The Vice-Chair (Mr. Shafiq Qaadri): To the NDP, Mr. Miller.

Mr. Paul Miller: I've got a quick question. Would you think that it's possible that in Toronto—I'm from Hamilton and I'm astounded by the cost of residential houses here. I'm astounded by the rent costs here. I guess it's all about location, location. I have a real problem with that.

Would it be fair to say that you've noticed that some building owners are trying to force out the low-income people so that they can do whatever they've got to do to their building to attract higher-rent payers and jack up the rents, depending on the district? Do you feel that that's been going on? It certainly has been happening in Hamilton.

Mr. Bart Poesiat: Absolutely. It's a real problem in areas such as Parkdale, where the rents were, up till recently, comparatively—I wouldn't say low but a little below average. It's a very desirable area now, a lot of gentrification going on. The rental stock is 40 or 50 years old, getting to its end. Landlords, some very big ones, are buying up these properties and forcing the tenants out.

How do they do that? I'm not going to mention any names here at this committee, but they focus on people with disabilities and seniors who have been sitting in these apartments, sitting tenants, for a long time, so the rent is low, comparatively speaking, because it's under control. Then what they do is, they begin to give these people a rough time. They're saying, "You owe us $2,000. You'd better go to the Landlord and Tenant Board. We're going to evict you if you don't." People go, "My, my," and they get in a tizzy and they move out. Then it's a free-for-all.

Mr. Paul Miller: I guess my quick question, how many units have been removed from—

Interjection.

Mr. Paul Miller: He cuts me off every time. I can't help it.

The Vice-Chair (Mr. Shafiq Qaadri): It is certainly not intentional. Mr. Sergio.

Mr. Mario Sergio: Thank you very much, Mr. Poesiat—

Interjection.

Mr. Mario Sergio: You started your presentation saying you support the bill in its present form, which is very nice. But I want to go to the "however" part of your presentation.

We heard before about some of the complaints with the existing stock—repairs, very horrible conditions. I have to tell you that my area includes the wonderful community of Jane and Finch, where I have a lot of tenants. Where you are in the Parkdale area, you have a lot of older buildings as well. A lot of tenants I have say, "I don't mind paying what I pay, but I'd like to have a livable unit."

In your particular legal business there, you have at your disposal the health department, property standards, bylaws, the local councillor, a mayor who seems to be very much people oriented. What is the success in doing that? Tenants have rights not to pay rent unless that unit is kept in good condition. What's your record on that? What do you do with respect to that?

1000

Mr. Bart Poesiat: Our experience with enforcement of standards—that's a municipal responsibility—was not that great. That's why we launched the Golden Cockroach campaign. Eventually, we got a lot of support from the city of Toronto. They did improve the inspection system a bit, not quite to what we wanted, because we wanted licensing of landlords or buildings. It didn't go that far. There are good examples in the United States, for instance, Los Angeles. We didn't get what we wanted but there has been some improvement in standards.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Sergio. I need to intervene there. Thank you, Mr. Poesiat, for your deputation on behalf of Parkdale Community Legal Services.

Mr. Mike Colle: Point of order.

The Vice-Chair (Mr. Shafiq Qaadri): Yes, sir?

Mr. Mike Colle: I wonder if we could have research give us a comparative look at rental prices in Hamilton, housing prices in Hamilton, unemployment in Hamilton, compared to Toronto. I think Mr. Miller brought a good point. It's a wonderful place to live, and I tell my family and friends, "Listen. If you're ever looking, it's a great place with a great hospital, waterfront, everything." But Hamilton—we should find out why there's such a difference in these costs between the two cities. I'd like to get that—

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Colle. Research is duly directed. Ms. Forster?

Ms. Cindy Forster: I'd like to have some research as well on the number of units that we've lost out of the rent control stock because of vacancy decontrol.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. And that's for our researchers, not you, Mr. Poesiat, just so you know.

FEDERATION OF METRO TENANTS' ASSOCIATIONS

The Vice-Chair (Mr. Shafiq Qaadri): I now invite our next presenter to come forward, the Federation of Metro Tenants' Associations, Mr. Dent. Welcome, and please begin.

Mr. Geordie Dent: Thank you very much. Members of the committee, I'm here today to discuss the importance of Bill 19 and its impact on tenants in Toronto.

Bill 19 and the attempt to cap rent increases at sustainable levels is welcome news to our organization because we deal directly with about 30,000 tenants a year. We have heard from thousands and thousands and thousands of tenants this year through our hotline and outreach services. Many of them are upset at the high guideline

increase for 2012. We've been happy to inform them of this proposed legislation and the response has been positive, sometimes—mainly positive—although many, many are upset that it's not going to apply to 2012.

While we welcome the stability of this legislation, it hasn't been overwhelmingly supported by our board of directors and our tenant members, namely because of its narrow effect on renters. As has been noted by other community agencies that we collaborate with and talk to, if the legislation had been in effect for the last two years, the difference on $1,000 rent would be approximately three bucks.

There is stalling private rental housing development, with only 8% of construction currently going to purpose-built rental in Toronto. Rents are increasing higher than inflation. There is an historically, extremely low vacancy rate. There's weak affordable housing development. The social housing waiting list breaks new records of people on the list every month. Wage stagnation and the condo-ization of the housing market are putting the squeeze on tenants needing an affordable place to live.

The opinion of our board of directors is this: This legislation isn't an adequate response to the affordability problems that most tenants face. These issues cannot be addressed with a simple, quick amendment to legislation.

The board of the FMTA, our members and the clients we serve have made numerous suggestions to strengthen Bill 19.

We believe that safeguards should exist to ensure that there's a proper state of repair in exchange for rent increases. Landlords are allowed to increase rents automatically by inflation every year. This increase does not require the landlord to show that they (a) have kept the unit in a state of good state of repair; (b) that they've improved anything in the unit; or (c) faced any cost increases. The tenant's unit may actually have outstanding repair issues or work orders, and I've seen this many, many, many times on our hotline. And in cases where there are outstanding work orders, why are tenants being asked to pay increases automatically? Should the tenant not have to pay an increase if they're not getting what they're paying for?

Our board of directors also recommends that the 1991 exemption to rent increases be eliminated. Current legislation includes this exemption, meaning that buildings could get any rent increase in these buildings. It's meant that new condo units have been the primary driver of high rents, as noted by CMHC data. Eliminating this provision would be an effective way to curtail rent inflation. In addition, there was a private member's bill moved by MPP Norm Sterling, I think in the last session of the Legislature.

Bill 19 also does not take into account above-guideline rent increases. These allow landlords to raise rents by 9% per application above the guideline. There's a variety of reasons why a landlord can apply for an AGI, above-guideline rent increase: mostly capital repairs, taxes or utilities.

Tenants that we service say that they find this legislation abhorrent. Landlords are already allowed to increase rents automatically by inflation, and thousands of tenants have asked us the following question: "If guideline increases are not for repairs and improvements, what are they for? Why are landlords allowed to get an additional 9% increase on the rents?"

Some tenants are serviced by us year after year in regards to above-guideline rent increase because they face above-guideline rent increases every year. I was dealing with 45 Balliol yesterday. It has faced an above-guideline rent increase every year since 1998.

I've heard repeated cries from tenant associations across the city that these above-guideline increases should be eliminated and, barring that, that caps and regulations should be introduced to ensure fairness in an AGI process.

Finally, we believe that vacancy control should be reintroduced. Current rent regulations, as you know, only apply to existing tenancies. Any rent can be negotiated for a new tenancy, meaning that during periods with a low vacancy rate, such as we're in right now, rents can grow exponentially as demand far outweighs supply. Such a situation happened in Vancouver in the lead-up to the Winter Olympics. I was there. Rents doubled in a four-year period—doubled. It led to widespread abuse by landlords, increases in homelessness and a housing crisis that's still in effect today.

With rents being higher in condo units and with a lack of rental housing development, the increase in Toronto rents and decrease in vacancy rates are very worrisome, mainly because this is happening during an economic recession. If the economy rebounds and there's strong growth in Toronto, the rate of inflation could become very detrimental to the rental population, and you can see an even lower vacancy rate and even higher, exponentially increasing rents. Thank you.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you. We'll begin with the NDP. Ms. Forster.

Ms. Cindy Forster: In the last session of the Legislature, from 2008 to 2011, the NDP brought forward five different bills around the rental issues that you just discussed—landlord licensing, vacancy decontrol, full rent control, inclusionary zoning—none of which were supported by the majority Liberal government. So if you had a priority to pick—I know that all of these issues kind of mesh together—for another amendment to the RTA bill, which one would be the priority for the majority of your tenants?

Mr. Geordie Dent: I don't generally speak on that. What I do is I service tenants, and I can tell you what they say. I can say that the number one issue that we face in our services would be repair issues, tenants not getting what they pay for. The number two issue that we get on our hotline is affordability issues. I think it's obviously up to you all here to decide how best you would like to address those issues with your constituents.

Ms. Cindy Forster: Thanks very much.

The Vice-Chair (Mr. Shafiq Qaadri): No further questions from the NDP? All right, thank you. We'll move to the government side. Gentlemen, I would invite you to battle it amongst yourselves and please begin.

Mr. Mario Sergio: Mr. Dent, I want to take you to the last line of your presentation here, where you're saying that the rate of rent inflation could become very detrimental to the rental population. Bill 19 was brought in because of the economic situation that we have now. That is why—and I haven't heard it from anyone yet—the four-year span during which you know that the rent will not go any lower than 1% or over 2.5%. So there is some stability. You're calling for stability, so there is some stability for tenants where, for the next four years, they can do some planning.

Mr. Geordie Dent: For sitting tenants.

Mr. Mario Sergio: City?

Mr. Geordie Dent: Sitting. People who are currently in the unit.

Mr. Mario Sergio: Oh, yes. Yes, indeed. Given that, what do you feel is the reaction of the clients and the tenants that you serve? Is it that some say, "Yes, this is good. We should keep it. We should improve it"? I appreciate some of the other comments in changing the bill to make it even better, if you will. We hear that. But how would that affect the mentality of the tenant to say we have a four-year span during which to plan, given the economic situation?

1010

Mr. Geordie Dent: I think for some tenants on a fixed income who are currently sitting in their unit and have been in their unit for a number of years, it's good for them to have the stability of knowing the range that they're going to be dealing with in a rent increase. I think that this legislation, though, is not going to help tenants who move into an apartment, because their rent can be raised to whatever the market will bear, and it's an extremely low vacancy rate, so the market is going to bear a lot. I don't think it helps the tenants who are currently living in squalor. Their landlords, this year, are getting a 3.1% increase, and they're not living up to code in proper living conditions. And I don't think that it's going to help tenants in condos. We get a lot of calls from tenants in condos. This is not going to apply to them.

Mr. Mario Sergio: Thank you.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Sergio.

Mr. Clark.

Mr. Steve Clark: Thanks very much for your presentation. I'm interesting in knowing a little bit more about your organization. I understand with the hotline. Can you give me a little overview of your organization and how many groups are involved, just a general overview?

Mr. Geordie Dent: Depending on how you count, we have about 1,000 to 3,000 members, and that's just because some of our tenant associations may have 30 active members but they represent 200 tenants. So we have a variety of members across the city of Toronto. Some of them are individual members; the bulk of them would be tenant association members, so they're involved in a tenant association. They drive the agenda of our organization.

We also do services for the city of Toronto. These include a tenant hotline that gets about 10,000 calls a year and an outreach service that will go into about 100 buildings a year and speak directly with about 20,000 tenants. We have an education service, and we create a variety of publications in a variety of different languages for all tenants, mostly through education projects.

Mr. Steve Clark: I've heard from a number of tenants. Granted, I'm from a small, predominantly rural area of the province, but I do get a lot of inquiries—and I know it has got nothing to do with Bill 19—about landlord-tenant issues and about advocacy. Do you get a lot of complaints—I appreciate you've already answered about complaints regarding repair and affordability issues. Do you have a lot of calls regarding the board and any calls for reform?

Mr. Geordie Dent: Oh, yes, all the time. We're a Toronto service. If we get a call and at the end of it happen to find out they're from a rural part of Ontario—whoops, but we try to service everyone we can. We're really only supposed to service people in Toronto, though. But I can tell you that, yes, we get problems about the board all the time.

I think for members of this committee and for the Legislature, you may see the board as a fair place to go, a place where tenants can go and deal with their issues. The reality is that it's not very accessible.

I was looking at the stats today. In 2009-10, there were about 70,000 applications made by landlords at the board, province-wide. For tenants, it was about 6,000, even though tenants far outnumber landlords, even though repair issues are abundant. There's a really bad state of repair. If you look at the Toronto city bylaw enforcement office, they found 20,000 deficiencies in the 400 buildings they've looked at; that's 60 deficiencies a building. That's just in the common areas; that's not unit by unit.

So I hear a lot of problems with the board, mainly because most tenants don't know how to litigate, and that's what you have to do with the board.

The Vice-Chair (Mr. Shafiq Qaadri): Thank you, Mr. Clark. I'll need to intervene there.

Thank you, Mr. Dent, for your deputation on behalf of the Federation of Metro Tenants' Associations.

Unless there is any further business, the committee will be in recess until 2 p.m., after which we'll have one more final presenter of the day. The committee is in recess.

The committee recessed from 1015 to 1016.

The Vice-Chair (Mr. Shafiq Qaadri): If it's agreeable to members of the committee, we happen to have our 2 p.m. presenter here. If you allow me to run the clock, we'll adjourn, then, at 10:30, if that's suitable? Is that all right?

Interjection: That's fine, that's fine.

The Vice-Chair (Mr. Shafiq Qaadri): All right.

ADVOCACY CENTRE FOR TENANTS ONTARIO

The Vice-Chair (Mr. Shafiq Qaadri): Mr. Hale, you're eagerly awaited. You'll be interrupted by some

bells fairly soon, but I'd invite you to please begin. Obviously, the bells will start and we have to vote—actually, we have to go to question period—but please begin.

Mr. Kenneth Hale: Well, thank you very much for giving us the opportunity to speak to this bill. I'm from the Advocacy Centre for Tenants Ontario, a provincially mandated community legal clinic funded by the legal aid plan, Legal Aid Ontario. My name is Kenneth Hale. I'm the director of advocacy and legal services.

We're here to ask you to make some further changes to the rent regulation system that are actually going to improve affordability for tenants in the private market. We believe that it's the tenants in Ontario who are bearing the brunt of the economic difficulties that we're facing. They're the people who are being laid off; they're the ones who are fighting off the demands for wage freezes and rollbacks; they're the ones whose incomes are stagnant or dropping as a result of government austerity. Most notably, a 1% increase in social assistance payments doesn't really begin to address the catching up that these people on social assistance need.

Unlike homeowners, tenants aren't benefitting from the real estate boom. The only thing the real estate boom is doing for them is pushing their rents up further. The rent regulation system is supposed to protect them from this pressure to ensure that they don't face economic eviction or their standard of living isn't cut because of rents biting more and more into the money that they have available. The proposal to cap the rent increase guideline at 2.5% provides some measure of protection. We support that part of the bill. But it's clear that much more needs to be done, and we think that you should do it now.

We've met with the minister and discussed with her changes that we think she needs to bring into the housing market. She told us she's working on it, that her and her ministry are on it and we believe that she's doing that, but tenants are facing problems immediately.

Let me just get to our recommendations. First, eliminating the 1% floor for annual rent increase guidelines: This was announced as a tenant protection bill, but in the tenant protection part of it, I guess, in order to look fair and balanced, you decided to propose a guaranteed 1% minimum increase. Well, the rental market isn't fair and balanced. Even a 1% increase is not affordable to people on social assistance—and we're talking about almost a quarter of a million households in Ontario that are receiving social assistance.

If inflation falls below 1%, we can be pretty sure that the government isn't going to increase the shelter allowance for people on social assistance. So their ability to pay for food, medicine and other necessities is further compromised. But really, the problem with the 1% is just giving landlords the idea—this sense of entitlement that they have—that they're entitled to always get an increase no matter what's going on in the economy. Maybe the cost of living is never going to fall below 1%, but if it does, landlords shouldn't be able to impose rent increases that are out of line with the cost of living. We think that paragraph 2 should be amended to take out the 1% floor.

Secondly, the exemption for new buildings—and you've heard about this from other deputants. These are not new buildings anymore. Most of them start at 1991, which is over 20 years ago, may I remind you. I know time goes by pretty quickly, but 1991 was over 20 years ago. These are not new buildings. The exemption was provided in the predecessor legislation to try to encourage private investment in the rental housing market.

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It hasn't worked. This incentive, allowing landlords to charge and raise rents whenever, if they build a building, hasn't created a building boom. There's very little purpose-built rental housing being built. We've averaged about 3,100 rental starts each year from 1995 to 2011, when it's estimated that we need about 10,000 units annually.

It should be pretty clear by now that these targets are not going to be met without a federal and provincial funding commitment to new construction as part of a long-term affordable housing strategy. Neither level of government has been willing to make that commitment, but the tenants of these newer buildings continue to be left in economic jeopardy in support of this failed incentive scheme. I think it's time to just sort of say, "This was a good idea, but it didn't work. Let's give these tenants the same protection that other tenants have."

Individually owned condominiums have been cited as an example of: Here's where our new rent supply is coming from. But that is not secure housing. Those people are subject to unlimited rent increases, not to mention the likely happening of their unit being sold and an owner being able to move in. So that doesn't provide stable, long-term housing that this province needs.

I cited one example of the way that the Landlord and Tenant Board is reacting to this extreme situation, but I think that's really an anomaly. Asking individual tenants to go and try to get their rent increase rolled back because of the landlord's motives is not a way to run a rent regulation system.

Then, there's vacancy decontrol. You've heard from the Federation of Metro Tenants' Associations, their concerns about it. We have the same concerns. Over time, vacancy decontrol decreases the number of affordable units available, and in order to be effective we should have policies that address the gap between low incomes and high rents, as well as dealing with the shortfall in the number of units that are available.

But if we have a housing allowance or a housing benefit program for low-income households, we think that's great. More social assistance for more people is good, but allowing unregulated rent increases, letting landlords set the rents, which dictate how much assistance you have to pay, these are things that are working at cross-purposes. It doesn't make any sense to allow landlords unlimited rent increases and a housing benefit that makes up an ever-growing gap. So, we think, if you're thinking about this rent housing allowance program, it has to be part of an overall program that keeps a lid on the rents in order to protect the public investment that's being made in such a program.

So, 45% of tenant households in Ontario pay 30% or more of their household income on shelter costs. One in five Ontario tenants pay 50% or more of their household income on shelter costs, and that's the point at which you're really at risk of homelessness. If half your income is going to your rent, chances are, something's going to come along sooner or later that's going to put you behind the eight ball.

As the private market becomes more unaffordable, the social housing lists get longer and longer, but there is no program to build social housing, so it's really unrealistic to expect that the social housing that we're building, or not building, is going to meet this demand. So that demand is going to have to be met in the private market, and we have to find a way to stop more erosion of the affordable housing that's there.

We think these are urgent changes. Some of these changes—vacancy decontrol would be a big change. I mean, it was part of our law for 20 years or so. It's now 10 or 15 years that it hasn't been there. It will take some time to actually implement the details of it. We're available to work with the government on working out those details. We work with the landlord groups at the Landlord and Tenant Board stakeholder advisory committee talking about housing policy there. I think we have to recognize that in the present economic difficulties, people are really facing homelessness, people are facing inadequate housing, and that's having an impact on our ability to recover from the recession and to make Ontario the kind of place that we want, where everyone has a secure, affordable home.

The Vice-Chair (Mr. Shafiq Qaadri): Thanks very much, gentlemen. To the government side for questions.

Mr. Mario Sergio: Thank you for the presentation. Some of the previous presenters did mention—I think it was the last one, actually—that the city of Toronto inspections department found some 20,000 units in need of repairs.

Mr. Kenneth Hale: It's 20,000 deficiencies in 400 buildings, I think he said.

Mr. Mario Sergio: Oh, 400 buildings.

Mr. Kenneth Hale: Yes.

Mr. Mario Sergio: Now, is it because landlords don't make enough money, or are they just negligent and not making repairs? I'm alluding to eliminating the 1% cap, if you will. I think the legislation wants to be a bit balanced, being fair to tenants and being fair to landlords. If landlords don't make any money, more disrepair will continue and more enforcement will be required. Your thoughts on that?

Mr. Kenneth Hale: I think it goes back to Mr. Miller's question: How much money are you people making? If you look at some of the publicly available information about the returns on things like real estate investment trusts, you see that they are making huge returns on the investment. I don't know if that's typical of landlords, but I think Mr. Brescia could have given you a better answer than, "We don't have any idea how much money our members are making, so I can't even answer that."

There's publicly available information showing they're making a lot of money, but the repair issue shows that there's not a balance in the market. Tenants are not able to enforce their side of the bargain.

The Vice-Chair (Mr. Shafiq Qaadri): I'll need to intervene there, Mr. Sergio. To Mr. Clark.

Mr. Steve Clark: That's fine. Mr. Hale and I have met. I appreciate it.

The Vice-Chair (Mr. Shafiq Qaadri): You'll cede the PC time then, Mr. Clark?

Mr. Steve Clark: I will.

The Vice-Chair (Mr. Shafiq Qaadri): Okay, to Ms. Forster.

Ms. Cindy Forster: Thank you. Eliminating the 1% floor is a very interesting proposal, and you've got some really good rationale for doing it. What I was surprised to hear from one of the earlier presenters here today was that there are landlords that are going for above-guideline increases year after year after year, and he named one building. Is this a practice of many buildings across Toronto? Are they getting approved?

Mr. Kenneth Hale: I don't know. I think it's a particular approach of some building management companies to managing their buildings. By planning renovations and repairs, some of which are probably really needed and some of which are maybe not so much, they have a strategy of spreading that out so that they'll get these rent increases year after year.

Other landlords have the strategy that Mr. Poesiat talked about: "Let's chase the old tenants out and get new tenants in and raise the rents through vacancy decontrol." I think there are different approaches taken by different landlords. Other landlords live within the guideline, bank the money and do the repairs that are necessary as they come up—

The Vice-Chair (Mr. Shafiq Qaadri): With respect, I'll need to intervene there. I'd like to, first of all, thank the members of the committee for allowing us to go over, and I'd like to thank you, Mr. Hale, for testifying with your deputation four hours ahead of schedule.

The committee has now concluded its deputations for the day. We have clause-by-clause on Monday at 2 p.m. The deadline is tomorrow at 2 p.m. The researcher will ask later when her deadline is for the research, and I would invite you all to attend question period.

The committee adjourned at 1029.

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Monday 11 June 2012

Standing Committee on Justice Policy

Residential Tenancies Amendment Act (Rent Increase Guideline), 2012

Chair: Laura Albanese
Clerk: William Short

Assemblée législative de l'Ontario

Première session, 40e législature

Journal des débats (Hansard)

Lundi 11 juin 2012

Comité permanent de la justice

Loi de 2012 modifiant la Loi sur la location à usage d'habitation (taux légal d'augmentation des loyers)

Présidente : Laura Albanese
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

Monday 11 June 2012

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE LA JUSTICE

Lundi 11 juin 2012

The committee met at 1403 in committee room 2.

RESIDENTIAL TENANCIES AMENDMENT ACT (RENT INCREASE GUIDELINE), 2012

LOI DE 2012 MODIFIANT LA LOI SUR LA LOCATION À USAGE D'HABITATION (TAUX LÉGAL D'AUGMENTATION DES LOYERS)

Consideration of the following bill:

Bill 19, An Act to amend the Residential Tenancies Act, 2006 in respect of the rent increase guideline / Projet de loi 19, Loi modifiant la Loi de 2006 sur la location à usage d'habitation en ce qui concerne le taux légal d'augmentation des loyers.

The Chair (Mrs. Laura Albanese): Good afternoon, everyone. We're here for clause-by-clause consideration of Bill 19, An Act to amend the Residential Tenancies Act, 2006 in respect of the rent increase guideline. Any opening statements before we proceed to the clause-by-clause consideration? Yes?

Ms. Cindy Forster: I'd be happy to have some opening statements.

Last week, we heard from, I think, seven different agencies and groups that were supportive of us making more changes to the Residential Tenancies Act than just the one that's being proposed by the government. They were looking at proposals around the vacancy decontrol issue, around removing the 1991 date for exempting rent control buildings here in the city, which amounts to a lot, 55,000 units, that have an exemption. I think the expectation of the people who live in rental units across this province and who live in units that are in disrepair, of which we heard were many, is they're expecting more. They're expecting more from this government, they're expecting more from the opposition party, and they're expecting more from the NDP.

I'll be speaking to some of those amendments, hopefully, during this two-hour session.

The Chair (Mrs. Laura Albanese): Thank you, MPP Forster. Any further debate? MPP Sergio.

Mr. Mario Sergio: Madam Chair, before we delve into the contents of the meeting here, let me say that today we are dealing strictly with Bill 19, which deals with rent guidelines, and we are not touching whatsoever the rental tenancy act. That's two completely different things. I say that now. This way, I won't have to repeat it later on in the meeting.

The Chair (Mrs. Laura Albanese): Thank you, MPP Sergio. Any further comments? Mr. Clark.

Mr. Steve Clark: I just want to chip in as well. We've been pretty consistent that there are some very substantive housing issues in this province. We've heard from a lot of groups over the last six, seven months. Again, we've been very clear on this act, that we don't feel this act is necessary. However, if the other parties want to engage in some of the more substantive housing issues in the province and deal with it on a basis between the three parties, we'd be more than happy to entertain those offers.

The Chair (Mrs. Laura Albanese): I believe MPP Miller would like to have a few words.

Mr. Paul Miller: Yes. I see that the government has set out their situation quite quickly. We certainly believe that some of these amendments are very useful. They are interconnected; we don't believe that it's a separate issue. We will be bringing them forward.

We would also like a recorded vote on every one of the amendments we bring forward, please.

The Chair (Mrs. Laura Albanese): A recorded vote on every NDP amendment.

Mr. Paul Miller: On every NDP motion, we want a recorded vote.

The Chair (Mrs. Laura Albanese): Thank you. That's very clear. Any further comments? Okay, we shall proceed.

We have a new section that is being proposed by the NDP, and I would ask MPP Forster to read that into the record.

Ms. Cindy Forster: I move that the bill be amended by adding the following section:

"0.1 Subsection 6(2) of the Residential Tenancies Act, 2006 is repealed."

The Chair (Mrs. Laura Albanese): Thank you, and—

Ms. Cindy Forster: We seek unanimous consent to amend a section of the act—

The Chair (Mrs. Laura Albanese): Sorry. I have to rule on it first.

Mr. Paul Miller: And then a further explanation, if needed.

The Chair (Mrs. Laura Albanese): Absolutely. I will have to rule that motion out of order, because that section of the bill is not open.

Ms. Cindy Forster: Our argument is that—

The Chair (Mrs. Laura Albanese): Unanimous consent first.

Ms. Cindy Forster: I ask for unanimous consent to actually deal with this issue.

The Chair (Mrs. Laura Albanese): Is there unanimous consent?

Mr. Mario Sergio: No.

The Chair (Mrs. Laura Albanese): There is no—

Mr. Paul Miller: With all due respect, is it my understanding that the government does not want to talk about it at all?

Mr. Mario Sergio: Madam Chair—

Mr. Paul Miller: I thought I had the floor.

Mr. Mario Sergio: There is no more debate?

The Chair (Mrs. Laura Albanese): There is no more debate, because it's ruled out of order.

Mr. Paul Miller: I would just like to have it on the record that the government does not want to discuss it; that's all. Thank you.

The Chair (Mrs. Laura Albanese): We're going to move now to section 1. This motion was ruled out of order. Therefore, we'll move to NDP motion number 2.

Ms. Cindy Forster: Point of clarification: So I have no opportunity to even argue the reasons why I wanted to amend this section of the bill?

The Chair (Mrs. Laura Albanese): At this point, that would be—for this motion, no, because the section is not open.

Ms. Cindy Forster: So once it's ruled out of order, there's no interest in even hearing what I actually have to say on this issue?

The Chair (Mrs. Laura Albanese): Unfortunately not.

We'll now move to section 1, NDP motion number 2.

Mr. Paul Miller: I move that section 1 of the bill be amended by adding the following subsection:

"(0.1) Section 120 of the Residential Tenancies Act, 2006 is amended by adding the following subsection:

"'Guideline increase, new tenants

"'(1.1) Despite anything in this Act, no landlord may charge a new tenant for the first rental period of a rental unit under a new tenancy agreement a rent which is greater than the lawful rent being charged to the former tenant of the rental unit plus the guideline.'"

The Chair (Mrs. Laura Albanese): Thank you for that, MPP Miller. Unfortunately, I will have to rule this motion out of order, because it's out of the scope of the bill. It expands and broadens the bill that we are considering today.

Mr. Paul Miller: Question?

The Chair (Mrs. Laura Albanese): Yes, MPP Miller?

Mr. Paul Miller: I'd like to know from legislative counsel why it's out of the scope of the bill we're talking about. How did they arrive at that?

The Chair (Mrs. Laura Albanese): I would like to make clear that we can ask legislative counsel to speak, but it's the Chair who rules the motion out of order. Yes, you can still ask why.

Mr. Paul Miller: I think I just did.

The Chair (Mrs. Laura Albanese): Could legislative counsel please explain why it is out of the scope of the bill?

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Ms. Marie-France Lemoine: This is a decision for the Chair to make, but when we talk about scope, we look at what is the subject matter of the bill. In this case, we have to see what is the subject matter of the bill.

There are two ways of looking at it. We can say the subject matter of the bill is specifically the guideline—how do we calculate the guideline—and then a floor and a ceiling to the amount of the guideline, and then the publication of the guideline and then the review by the minister of section 20 on the operation of section 120. One could look at it as a very narrow, "This is the scope of the bill, and anything that would be outside would be outside the scope."

Another view—

Mr. Paul Miller: With all due respect, who—

The Chair (Mrs. Laura Albanese): Can we let legislative counsel finish, please.

Ms. Marie-France Lemoine: Another way of looking at it—we could also look at the scope of the bill and say, "Well, the scope of the bill is to deal with not only the guideline, but do we expand it to say what does the guideline apply to?" In that case, the subject matter of the bill would be not only specifically matters relating to the guideline, but matters relating to the application of the guideline. In that case, extending the application to new tenants would be within the scope, if the subject matter of the bill was found to be this. But again, this is an issue to be decided by the Chair.

The Chair (Mrs. Laura Albanese): I have ruled on it because it seems very clear to me that the intent of the bill is in regards to the rent increase guideline.

We will—

Mr. Paul Miller: With all due respect, Chair, our question that we were about to answer follows along the same lines as what legislative counsel had said, except the way someone interprets a certain paragraph could be different than another person, and it depends what it applies to. If you read our submission here—which apparently we're not allowed to do to ask a question—it certainly falls within those guidelines that legislative counsel just said. I don't understand how you can rule when you haven't read it—

Mr. Mario Sergio: Excuse me, Paul.

Mr. Paul Miller: I'm talking to the Chair. I'm not talking to you; I'm talking to the Chair.

Interjections.

The Chair (Mrs. Laura Albanese): One member at a time. One member at a time.

MPP Miller still has the floor, and then I will proceed to you, MPP Sergio.

Yes.

Mr. Paul Miller: Go ahead, read it. It's right along what she just said.

Mr. Mario Sergio: Point of order, Madam Chair.

The Chair (Mrs. Laura Albanese): Yes, point of order.

Mr. Mario Sergio: Even if I want to, I cannot raise my voice. You have already decided. The motion, on the unanimous call, lost already. There is no further debate.

The Chair (Mrs. Laura Albanese): Not on this one yet, but it's coming up.

Mr. Mario Sergio: Then before any debate, you should be calling for that, and if that loses, that's the end of the debate, Madam Chair.

Mr. Paul Miller: Point of order, Madam Chair: First of all, we dealt with one, if we had paid attention, and that was ruled out of order. That's fine; we've lost that one, unfortunately. This one, we're in discussion with legislative counsel, and you already want to rule it out of order when we haven't finished talking about it.

Interjections.

Mr. Mario Sergio: No.

Mr. Paul Miller: I did hear what she said.

The Chair (Mrs. Laura Albanese): MPP Miller, just to be clear, I have ruled on this motion. When the Chair rules on a motion, there is no further debate. However, because you did ask to have the opinion of legislative counsel, I have allowed that. Would you like unanimous consent—

Mr. Paul Miller: What's our status now? Are we allowed to further discuss it?

The Chair (Mrs. Laura Albanese): If you'll let me speak. What would you like? Would you like to ask for unanimous consent to further consider this and to have a debate on it?

Ms. Cindy Forster: Yes.

The Chair (Mrs. Laura Albanese): Okay. So I ask, is there unanimous consent to continue discussion?

Mr. Mario Sergio: No.

The Chair (Mrs. Laura Albanese): We don't have unanimous—

Mr. Paul Miller: Wait a minute. The Conservatives are nodding yes. We're nodding. Mr. Qaadri indicated—

The Chair (Mrs. Laura Albanese): This is everybody—

Mr. Paul Miller: —that it was okay for me to ask the question just a few minutes ago. Now all of a sudden, it's no good.

The Chair (Mrs. Laura Albanese): "Unanimous" means everyone.

Mr. Paul Miller: Well then, let's have a vote on it. Put hands up then. I can't tell by people nodding.

Mr. Mario Sergio: We just did.

The Chair (Mrs. Laura Albanese): We asked and there is no unanimous consent. We will proceed to the next motion.

We'll now consider NDP motion 3. If MPP Forster could read it into the record.

Ms. Cindy Forster: I move that subsection 120(2) of the Residential Tenancies Act, 2006, as set out in section 1 of the bill, be amended,

(a) by striking out "Subject to the limitations" at the beginning of paragraph 1 and substituting "Subject to the limitation"; and

(b) by striking out "not less than 1 per cent and" in paragraph 2.

The Chair (Mrs. Laura Albanese): Would you like to speak to this motion?

Ms. Cindy Forster: Yes, I would. We believe that this amendment is definitely in order. The deputants at the hearing—six of the seven groups that we heard from last week—called for an amendment that would remove the 1% floor in the rent guideline to protect affordability for tenants. In the unlikely event that inflation falls below 1%, over 200,000—I think they quoted a number like 228,000—tenants receive social assistance, and they would be unlikely to receive an increase in their shelter allowance. They shouldn't have to pay an additional 1% in rent if they're not getting an increase in their social assistance.

This motion is also important because it sends a clear message out that this bill is about affordability for tenants, which is what our amendments are about. It's not about protecting landlords' rights to increase the rent. Landlords should not be entitled to an automatic increase at all times if inflation drops below 1%. Why should landlords be able to expect to automatically get a rent increase when social assistance recipients would not?

In addition, landlords already have the right to make application for above-the-rent guideline for unexpected tax increases, for major restorations to their buildings. I think this puts a level of affordability and fairness into the bill.

The Chair (Mrs. Laura Albanese): Any further debate? MPP Sergio.

Mr. Mario Sergio: Madam Chair, since the annual rent is based on the consumer price index, I think it's a fair motion to include as an amendment. We have no problem in supporting this amendment as, again, the rent guidelines are guided by the consumer price index of that particular year. We have no problem in supporting this motion.

The Chair (Mrs. Laura Albanese): Any other comments?

Mr. Steve Clark: I want to thank the other two parties for providing that compelling rationale, and we will be supporting the amendment, as well.

The Chair (Mrs. Laura Albanese): Any further debate?

Mr. Paul Miller: Recorded vote.

Ayes

Clark, Colle, Forster, Leone, MacLaren, Paul Miller, Qaadri, Sergio.

The Chair (Mrs. Laura Albanese): I will say none opposed. Carried.

We will now move to consider NDP motion number 4.

Mr. Paul Miller: I move that section 1 of the bill be amended by adding the following subsections to section 120 of the act:

"Guideline, outstanding work orders

"(5.1) Despite subsections (2) to (5), if a work order has been issued in respect of a rental unit and items in the work order are outstanding after the compliance period for their completion has expired, the guideline is deemed to be zero per cent for the purposes of the application of this section with respect to the rental unit until the landlord has completed all the items.

"Application of subs. (5.1)

"(5.2) Subsection (5.1) applies to a work order that is in effect on or after the commencement date, whether issued before, on or after that date."

The Chair (Mrs. Laura Albanese): Thank you, MPP Miller. Would you like to speak to this motion?

Ms. Cindy Forster: We've heard from deputants that many tenants are living in substandard apartments because landlords are negligent in making the needed repairs. Meanwhile, the landlords continue to be free to raise the rent. Tenants should not have to pay increases in rent if they're not receiving basic services and repairs to their units on an ongoing basis.

This motion would prevent landlords from imposing the guideline increases on tenants when there are outstanding work orders on their units. It will provide an incentive to landlords to get moving and get the repairs done in a timely way, and it would prevent the gouging of tenants for more money without providing the basic services. We believe that this particular amendment is directly related to the guideline amendment in 120(2).

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The Chair (Mrs. Laura Albanese): Any further debate? MPP Sergio.

Mr. Mario Sergio: Thank you, Madam Chair. I know the intent of the motion would be noble, if I may say, but I think this would be more of a detriment for the provision of new affordable units. I think this would have a totally adverse effect than the one proposed in the amendment, for a number of reasons.

Sometimes, we don't even know who has caused those deficiencies—if it's a normal break or something that has occurred in a particular unit. This would be a burden on local municipalities. Work orders have a life of their own, if I may say, Madam Chair. Not only are there the local agencies that oversee those repairs, that they are done, and done on a timely basis. The Residential Tenancies Act already makes provisions for that. They can apply quickly to the Landlord and Tenant Board for a quick fix, if you will. There are already measures available to both—I think it's to both, but especially to tenants—to see that indeed those repairs are done.

Other than that, this would really be a negative way, perhaps even more towards the tenants, so we cannot support this motion, Chair.

The Chair (Mrs. Laura Albanese): Further debate? MPP Miller.

Mr. Paul Miller: I'd just ask Mr. Sergio—so what you're saying is that you don't feel—for instance, a city inspector has issued a work order to a tenant under the tenancy act or whatever, to repair whatever it might be—a toilet; they could have cockroaches; there could be things like this—to fix this up before he raises their rent. You feel that that would be detrimental—to who? The landowner? How is that a negative impact by the tenant? I'm just curious. Maybe you could further your explanation on that.

Mr. Mario Sergio: Just very quickly—I don't want to dwell on it, Madam Chair—that could be one of the minor fixes, if you will. But again, the tenant has recourse with respect to that.

It is detrimental to freeze a landlord's rent on that particular unit. It can go on for months and months and months. The tenant has legal rights to apply to the rent control board for the toilet or the water or whatever—a hole in the wall—to be fixed. This would be an extreme measure to impose on landlords, where a freeze on that particular rent may go on for months and months. I don't think that this will have the desired effect. Therefore, we cannot support this motion.

The Chair (Mrs. Laura Albanese): Any further debate? MPP Miller.

Mr. Paul Miller: With all due respect, now they can pull the licensing for the building—inspectors can do that now—if they don't do the repairs in a proper time limit. They certainly are fair, and the inspectors give them enough time to repair it. Sometimes, the building owners don't want to do it. They want to raise the rent, and the people are still living in sub-conditions that are not even healthy in some aspects. So I have a real concern. That would give the owner a little incentive, if he wants to raise the rent, to at least fix up the building to a liveable condition. I don't think it's detrimental to the owners in any way, shape or form.

The Chair (Mrs. Laura Albanese): MPP Forster.

Ms. Cindy Forster: What the housing advocacy groups really wanted was an escrow account. They wanted to not pay any of their rent until their work orders were done, so that they would get their work repairs done in a timely way. But we thought that this was at least a small token to give them some relief when living in substandard units, living in units where they perhaps don't have any heat, or the elevator has been broken in their building for three years. We thought that this at least gave them a little bit of relief, tenant by tenant, as opposed to putting forth the amendment—that would have been ruled out of order—to say, "Let's open an escrow account that they can actually pay into until their repairs are done."

On the issue of this being a deterrent to new development, in fact, in 1991, when they passed the vacancy decontrol exemption, that was supposed to spur development but, in fact, it didn't, and there have only been about 3,000 units per year built—only 55,000 over 21 years. So, apparently there's no interest in developing rental units across the province to at least meet the needs of 10,000 people a year.

The Chair (Mrs. Laura Albanese): Any further comments? Are members ready to vote? So we shall proceed on a recorded vote.

Ayes

Forster, Paul Miller.

Nays

Clark, Colle, Leone, MacLaren, Qaadri, Sergio.

The Chair (Mrs. Laura Albanese): The motion is lost.

We'll proceed to consider NDP motion number 5.

Ms. Cindy Forster: We'll withdraw this motion at this time, as it was related to the first amendment.

The Chair (Mrs. Laura Albanese): Okay, so the motion is withdrawn.

We're now at the end of section 1. Shall section 1, as amended, carry? Carried.

We'll now consider—

Interjection.

The Chair (Mrs. Laura Albanese): There's a no? All those in favour? I thought I heard a no.

Mr. Paul Miller: You said you were carrying—it's section 1, right?

The Chair (Mrs. Laura Albanese): Section 1.

Mr. Paul Miller: As amended? We had an amendment in there.

The Chair (Mrs. Laura Albanese): As amended, yes.

Mr. Paul Miller: Yes, we support it.

The Chair (Mrs. Laura Albanese): Okay, so section 1 is amended and carried.

We'll now consider NDP motion number 6.

Mr. Paul Miller: Madam Chair, we're withdrawing 6, 7, 8 and 9, because they're all related to the initial ones we wanted.

Ms. Cindy Forster: To number 1.

Mr. Paul Miller: To number 1—they're all related to number 1, so we're going to withdraw them because we didn't even get to discuss it.

The Chair (Mrs. Laura Albanese): Okay, so you're withdrawing motions number 6, 7, 8 and 9.

That leads us to sections 2 and 3 together. Is there any debate on sections 2 and 3 of the bill? Shall sections 2 and 3 carry? Carried.

Shall the title of the bill carry? Carried.

Shall the bill, as amended, carry? Carried

Shall I report the bill, as amended, to the House? Carried.

Thank you. We're adjourned.

The committee adjourned at 1428.

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